

EARL D. LOVICK (VOL. 1)

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Libby 13:19:26 1 regard to Glenn Taylor, you write, "Their final  
13:19:30 2 diagnosis was questionable asbestosis in his case."  
13:19:30 3 Do you see that?  
13:19:30 4 A Yes, sir.  
13:19:34 5 Q Do you recall we reviewed the report from  
13:19:34 6 the doctor?  
13:19:36 7 A Yes, sir.  
13:19:38 8 Q And it was not questionable asbestosis but  
13:19:40 9 just plain asbestosis?  
10 A No, sir.  
13:19:44 11 MR. GRAHAM: I'd object to that as a  
13:19:46 12 misstatement of the discharge certificate, and if  
13:19:48 13 you want to refer back to it and refer to the  
13:19:52 14 recommendations, it says, "Patient should return for  
13:19:58 15 a lung biopsy, which he did not prefer to have done  
13:20:02 16 at this time, to determine definitely the diagnosis  
13:20:04 17 of asbestosis."  
13:20:06 18 THE WITNESS: And --  
13:20:06 19 BY MR. HEBERLING:  
13:20:08 20 Q So here in Exhibit 29 you quoted  
13:20:12 21 "Questionable asbestosis," did you not?  
13:20:16 22 A I quoted whatever that report says. What  
13:20:18 23 number is it?  
13:20:22 24 Q It's Exhibit 22. Do you see on the first  
13:20:26 25 page in the middle "Admission Diagnosis:

13:22:04 1 A Yes, sir.  
13:22:04 2 Q And was that true even if it meant  
13:22:10 3 spending more money to alleviate the situation?  
13:22:12 4 MR. MURPHY: Objection to the form.  
13:22:14 5 Vague and ambiguous.  
13:22:16 6 THE WITNESS: There's no conditions  
13:22:18 7 stated in this statement.  
13:22:18 8 BY MR. HEBERLING:  
13:22:22 9 Q So if it meant spending more money on  
13:22:24 10 maintenance crews, the company would do that?  
13:22:24 11 A Yes, sir.  
13:22:28 12 Q Then in the last paragraph, there's a  
13:22:42 13 discussion of when follow-up exams should take  
13:22:44 14 place. The last sentence, do you see it says, "He  
13:22:50 15 was not too definite in a suggestion for a  
13:23:00 16 follow-up. Perhaps a blanket in two years"? Do you  
13:23:00 17 see that?  
13:23:00 18 A Yes, sir.  
13:23:02 19 Q Did you seek other advice on how soon the  
13:23:02 20 follow-up exam should be?  
13:23:06 21 A We pretty much relied on Dr. Little's  
13:23:14 22 suggestion, because he was a pulmonologist with -- a  
13:23:22 23 radiologist with experience in industrial diseases,  
13:23:24 24 and we may have gotten some opinions from other  
13:23:30 25 doctors locally, but, primarily, we were relying on

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Libby 13:20:34 1 Questionable asbestosis"?  
13:20:34 2 A Yes, sir.  
13:20:38 3 Q And then do you see on the second page in  
13:20:40 4 the middle "Final Diagnosis on Discharge:  
13:20:42 5 Asbestosis"?  
13:20:46 6 A It states that -- It does state that, but  
13:20:52 7 the first page says, Questionable diagnosis (sic),  
13:20:54 8 and then the second page, on the last sentence, it  
13:21:00 9 says, "(The) patient shall return for a lung biopsy,  
13:21:04 10 which he did not prefer to have done at this time,  
13:21:06 11 to determine definitely the diagnosis of  
13:21:06 12 asbestosis."  
13:21:10 13 Q So is it your position that in quoting  
13:21:14 14 "Questionable asbestosis" that wasn't an error?  
13:21:14 15 MR. MURPHY: Objection.  
13:21:16 16 Argumentative.  
13:21:16 17 BY MR. HEBERLING:  
13:21:18 18 Q Go ahead.  
13:21:20 19 A No, I don't think that was an error,  
13:21:20 20 because it's quoted right from the report.  
13:21:22 21 Q And then in the fifth paragraph down, do  
13:21:24 22 you see where it says, Dr. Little "also stated,  
13:21:28 23 though, that we have a greater moral obligation to  
13:22:00 24 remove the hazard if one exists. This, I believe,  
13:22:00 25 we all agree with." Do you see that?

13:23:32 1 Dr. Little.  
13:23:34 2 Q Dr. Little is talking about a follow-up in  
13:23:48 3 one or two years. Did the company do that?  
13:23:48 4 A He says, Perhaps in two years. No, we did  
13:23:48 5 not do it.  
13:23:50 6 Q In fact, the company did not do that for  
13:23:50 7 five years; correct?  
13:23:56 8 A That's correct.  
13:24:12 9 Q Let's refer to Exhibit 30. Does that  
13:24:16 10 appear to be a letter signed by you to fellow  
13:24:20 11 employees dated September 9, 1959?  
13:24:20 12 A Yes, sir.  
13:24:26 13 Q And does it attach a list of doctors and  
13:24:30 14 various employees who, apparently, had those  
13:24:30 15 doctors?  
13:24:32 16 A Yes, sir.  
13:24:34 17 Q Okay. Are you the author of this  
13:24:36 18 Exhibit 30?  
13:24:40 19 A Yes, sir.  
13:24:50 20 Q And let's refer to Exhibit 32. Does that  
13:24:54 21 appear to be a memo from Mr. Bleich to Mr. Kelley  
13:24:56 22 dated April 13, 1961?  
13:24:58 23 A Yes, sir.  
13:25:04 24 Q Did you see this memo in Libby in 1961?  
13:25:06 25 A I don't recall.

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13:23:10 1 Q Is it likely that this is a Zonolite  
 13:23:10 2 document?  
 13:23:12 3 A Yes, sir.  
 13:23:16 4 Q Then let's refer to Exhibit 33, and does  
 13:23:20 5 this appear to be a letter by you --  
 13:23:22 6 MR. MURPHY: Did you skip 31 on  
 13:23:24 7 purpose, or did you just miss it?  
 13:23:28 8 MR. HEBERLING: I skipped over it.  
 13:23:28 9 MR. MURPHY: Okay.  
 13:23:30 10 BY MR. HEBERLING:  
 13:23:32 11 Q Does Exhibit 33 appear to be a letter by  
 13:23:38 12 you to Mr. C.A. Pratt dated June 14, 1961?  
 13:23:44 13 A Yes, sir.  
 13:23:46 14 Q Are you the author of this letter?  
 13:23:48 15 A Yes, sir.  
 13:23:48 16 Q Who was Mr. Pratt?  
 13:23:54 17 A He was the vice-president of Western  
 13:23:56 18 Mineral Products Company in Minneapolis, who were  
 13:23:56 19 one of our customers.  
 13:24:00 20 Q And did they purchase vermiculite from  
 13:24:00 21 your company?  
 13:24:00 22 A Yes, sir.  
 13:24:06 23 Q Did Zonolite own part of Western Mineral?  
 13:24:08 24 A They had a financial interest. Yes, they  
 13:24:08 25 owned a part of it.

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13:27:34 1 THE WITNESS: I don't know.  
 13:27:34 2 BY MR. HEBERLING:  
 13:27:36 3 Q Did you recognize at the time that you  
 13:27:38 4 needed further information to draw conclusions?  
 13:27:40 5 A We couldn't draw any conclusions at that  
 13:27:42 6 time, so, obviously, we would have needed more  
 13:27:44 7 information.  
 13:27:48 8 Q What efforts were underway to gather more  
 13:27:50 9 information to draw conclusions from?  
 13:27:52 10 A Well, among other things, we talked with  
 13:27:58 11 the doctors collectively that were in Libby about  
 13:28:02 12 the situation of our employees and asked their  
 13:28:08 13 advice on what could be done or what information  
 13:28:18 14 could gather, and we went along with what we learn  
 13:28:26 15 from them, and their conclusion was -- is that they  
 13:28:30 16 could not say that we had a serious problem with  
 13:28:38 17 employees and employees' health.  
 13:28:40 18 Q Is that your understanding of what  
 13:28:40 19 information you got from the doctors?  
 13:28:40 20 A Yes, sir.  
 13:28:42 21 Q Do you have any document from the doctors  
 13:28:44 22 that so states?  
 13:28:52 23 A Not that I recall, because this  
 13:28:56 24 information was given in meetings with them, and  
 13:29:02 25 think that there are documents which I have seen

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13:26:12 1 Q And then did Grace later acquire Western  
 13:26:14 2 Mineral?  
 13:26:14 3 A Yes, sir.  
 13:26:22 4 Q Had Mr. Pratt been making an inquiry with  
 13:26:24 5 concern for his own workers' health?  
 13:26:30 6 A I don't recall.  
 13:26:40 7 Q You're saying "In reply to your letter of  
 13:26:42 8 June 12".  
 13:26:44 9 A Excuse me. Yes. He would have made an  
 13:26:50 10 inquiry, which is why I would have written this  
 13:26:50 11 letter.  
 13:26:50 12 Q Have you seen the letter of June 12 any  
 13:26:52 13 time in the last ten years?  
 13:26:54 14 A Not that I recall.  
 13:27:04 15 Q Then in the first paragraph, you say, "I  
 13:27:06 16 am happy to outline our past experience (with)  
 13:27:10 17 regard to the effect of dust in our mill upon our  
 13:27:14 18 employees' health. This is a very complex and  
 13:27:16 19 confusing thing and one from which it is difficult  
 13:27:20 20 to draw any conclusions." Do you see that?  
 13:27:20 21 A Yes, sir.  
 13:27:22 22 Q What further information did you need at  
 13:27:26 23 the time to draw any conclusions?  
 13:27:28 24 MR. MURPHY: Objection to the form.  
 13:27:28 25 Lack of foundation.

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13:29:08 1 that outline what was stated by the doctors at  
 13:29:10 2 of these meetings.  
 13:29:12 3 Q How recently have you seen these  
 13:29:12 4 documents?  
 13:29:16 5 A I don't know. In the last few years.  
 13:29:20 6 That's as close an estimate in time as I can give  
 13:29:20 7 you.  
 13:29:22 8 Q Do you know who the author of such a  
 13:29:24 9 document might be?  
 13:29:24 10 A Me.  
 13:29:26 11 Q So is this some document where you  
 13:29:30 12 summarized what was said at a meeting?  
 13:29:30 13 A Yes, sir.  
 13:29:32 14 Q Do you know when you did that?  
 13:29:36 15 A Well, it would have been about in this  
 13:29:38 16 period of time, when we were dealing with  
 13:29:44 17 problem.  
 13:29:46 18 MR. GRAHAM: It's right in this  
 13:29:58 19 letter.  
 13:30:00 20 BY MR. HEBERLING:  
 13:30:04 21 Q Okay. At the bottom of page one you  
 13:30:04 22 repeat the statement. You say at the very last  
 13:30:06 23 sentence, "However, the asbestos dust in the  
 13:30:10 24 the air is of considerable toxicity." Is that  
 13:30:12 25 repeating a statement from the 1956 report?

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13:30:14 1 A It's quoted from that, yes.  
 13:30:26 2 Q And then on page two you discuss -- Do you  
 13:30:28 3 see where you discuss the Glenn Taylor case, and  
 13:30:32 4 then about the middle of the page you repeat -- you  
 13:30:36 5 state, "The final diagnosis of the man's case was,  
 13:30:44 6 one, of histoplasmosis and, two, of questionable  
 13:30:44 7 asbestosis"? Do you see that?  
 13:30:44 8 A Yes.  
 13:30:46 9 Q Now, is it fair to say that that's in  
 13:30:50 10 error, that the final diagnosis was plain  
 13:30:50 11 asbestosis, not questionable?  
 13:30:54 12 MR. MURPHY: Objection. It's been  
 13:30:56 13 asked and answered.  
 13:30:58 14 THE WITNESS: I don't think this is a  
 13:31:02 15 conflict, because while it's true it does say  
 13:31:04 16 "Asbestosis" -- But there's a footnote there. It  
 13:31:08 17 says he should return for a biopsy for that to be  
 13:31:08 18 proven.  
 13:31:08 19 BY MR. HEBERLING:  
 13:31:14 20 Q Then on page three, second full paragraph,  
 13:31:18 21 about two-thirds of the way down, do you see, "In  
 13:32:02 22 the case of the employees where their x-rays  
 13:32:06 23 interpretation showed some intrathoracic pathology,  
 13:32:08 24 it was up to the doctors to determine whether  
 13:32:10 25 further tests or examination or treatment should be

13:33:22 1 BY MR. HEBERLING:  
 13:33:24 2 Q "After all of the results of these x-rays  
 13:33:28 3 were in, we again met with the doctors and with the  
 13:33:30 4 radiologist and discussed what our situation  
 13:33:34 5 actually was in regard to pulmonary diseases from  
 13:33:36 6 our plant. The preliminary results of the  
 13:33:38 7 interpretations made it appear that we had a high  
 13:33:42 8 incidence of pulmonary disease among our employees.  
 13:33:46 9 However, after the doctors had analyzed the results,  
 13:33:48 10 the conclusion they came to was there was nothing to  
 13:33:50 11 indicate that there was a higher incidence of  
 13:33:54 12 pulmonary trouble among our people than there was  
 13:33:58 13 among any other group in the geographical area." Do  
 13:33:58 14 you see that?  
 13:33:58 15 A Yes, sir.  
 13:34:04 16 Q So even though you had 48 out of 130  
 13:34:04 17 abnormalities -- Correct?  
 13:34:06 18 A Yes, sir.  
 13:34:08 19 Q Which is over a third abnormalities?  
 13:34:10 20 A Yes.  
 13:34:12 21 Q Was it your understanding the doctors told  
 13:34:14 22 you that this was not unusual?  
 13:34:18 23 A It's not my understanding at all. That's  
 13:34:24 24 fact. That's what they told us at the meeting.  
 13:34:24 25 Q Is it possible you got it wrong?

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13:32:14 1 given. In the event that it was, this was to be at  
 13:32:16 2 the employees' responsibility and expense"? Do you  
 13:32:18 3 see that?  
 13:32:18 4 MR. MURPHY: I'm sorry. Where are  
 13:32:20 5 you, which paragraph?  
 13:32:20 6 THE WITNESS: I don't --  
 13:32:22 7 MR. HEBERLING: This is about  
 13:32:24 8 two-thirds of the way down. There's a small  
 13:32:24 9 paragraph.  
 13:32:26 10 MR. MURPHY: I see that.  
 13:32:26 11 THE WITNESS: Yes. I see that.  
 13:32:28 12 BY MR. HEBERLING:  
 13:32:28 13 Q Was that the company's position at the  
 13:32:34 14 time?  
 13:32:34 15 A Yes, sir. However, I would like to -- I  
 13:32:40 16 would like to add, it states that, but we had  
 13:32:44 17 employees' insurance for the employees, so that  
 13:32:50 18 insurance, which the health insurance that the  
 13:32:54 19 companies had, which was paid for by the company,  
 13:33:04 20 would cover much of this expense.  
 13:33:08 21 Q Okay. Then on page three you discuss a  
 13:33:14 22 meeting with the doctors, and I'll read part of  
 13:33:18 23 this.  
 13:33:20 24 MR. GRAHAM: Which meeting, because  
 13:33:22 25 there are two meetings discussed?

13:34:24 1 A No, sir.  
 13:34:26 2 Q You're 100 percent of sure of that?  
 13:34:28 3 A Yes, sir.  
 13:34:36 4 Q Did you ever find out that the normal  
 13:34:42 5 percentage of abnormal chests in a population is  
 13:34:44 6 five percent at most?  
 13:34:48 7 A No, sir. I never found out any figures.  
 13:34:54 8 Q In the group of doctors -- Which local  
 13:34:56 9 doctors would that have been --  
 13:34:58 10 A It would have been all of the doctors that  
 13:35:00 11 were in the city of Libby at that time.  
 13:35:02 12 Q So would that be Dr. Cairns, Dr. Nelson,  
 13:35:06 13 Dr. Seifert, Dr. Matthews and Dr. Little, the  
 13:35:06 14 radiologist?  
 13:35:08 15 A Yes, sir.  
 13:35:08 16 Q Any others?  
 13:35:14 17 A Probably -- Probably or possibly  
 13:35:16 18 Dr. MacKenzie.  
 13:35:20 19 Q Were any of those doctors lung  
 13:35:22 20 specialists?  
 13:35:22 21 A No, sir.  
 13:35:26 22 Q Do you recall any presentation of normal  
 13:35:32 23 figures for the incidence of abnormal chests?  
 13:35:32 24 A No, sir.  
 13:35:38 25 Q Now, Dr. Cairns, in his report, had warned

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13:35:52 1 that an examination was necessary for a diagnosis of  
 13:35:54 2 pulmonary disease; correct?  
 13:35:54 3 MR. GRAHAM: What was the number of  
 13:35:58 4 that exhibit so that we can refer to it and see  
 13:35:58 5 exactly what he said?  
 13:36:04 6 MR. MURPHY: And I object to the form  
 13:36:08 7 of the question, "Warned," in particular.  
 13:36:10 8 BY MR. HEBERLING:  
 13:36:14 9 Q This is Exhibit 26. Would you refer back  
 13:36:16 10 to that?  
 13:36:20 11 MR. GRAHAM: Thank you, Jon.  
 13:36:24 12 BY MR. HEBERLING:  
 13:36:24 13 Q Have you found it?  
 13:36:26 14 A Yes, sir.  
 13:36:28 15 Q Do you see in the second sentence where  
 13:36:32 16 he's talking about the survey, "It is not accurate  
 13:36:32 17 nor complete without a personal, physical  
 13:36:34 18 differential diagnosis, which should be done on all  
 13:36:40 19 cases showing any abnormal defects of the chest?"  
 13:36:42 20 A Yes, sir. It states that.  
 13:36:46 21 Q So is it fair to say that he cautioned  
 13:36:50 22 that a full exam was necessary for the diagnosis?  
 13:36:52 23 MR. MURPHY: Objection to the form of  
 13:36:54 24 the question. The document speaks for itself.  
 13:36:56 25 THE WITNESS: He made this

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13:37:00 1 statement. I guess you can interpret that as you  
 13:37:00 2 wish.  
 13:37:00 3 BY MR. HEBERLING:  
 13:37:04 4 Q Now, by the time you met with the doctors,  
 13:37:06 5 did you have results of physical examinations, or  
 13:37:10 6 was it still just the chest x-rays?  
 13:37:12 7 MR. GRAHAM: Vague and ambiguous as  
 13:37:16 8 to who it is he's talking about. He or the doctors  
 13:37:22 9 having the results of the tests, physical exams?  
 13:37:22 10 BY MR. HEBERLING:  
 13:37:24 11 Q Did you understand that I said, Did you  
 13:37:24 12 have any results?  
 13:37:28 13 A If these doctors -- If these employees had  
 13:37:30 14 physical examinations, we would not have received  
 13:37:46 15 copies of the results of those examinations.  
 13:37:46 16 Q So does it appear, then, that this  
 13:37:48 17 conclusion was drawn without physical examinations?  
 13:37:48 18 A No.  
 13:37:48 19 Q Was the conclusion based solely upon the  
 13:37:48 20 x-ray results?  
 13:37:50 21 A Now, which conclusion are you talking  
 13:37:50 22 about?  
 13:37:58 23 Q Page three of -- Back to Exhibit 33, which  
 13:38:00 24 I read, "The conclusion they came to was there was  
 13:38:02 25 nothing to indicate that there was a higher

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13:38:04 1 incidence of pulmonary trouble among our people.  
 13:38:04 2 there was among any other group in this geographic  
 13:38:08 3 area."  
 13:38:10 4 A This was a conclusion of the doctors, and  
 13:38:12 5 it was based upon all the information that they had  
 13:38:14 6 available to them.  
 13:38:16 7 Q Do you know if they had full physical  
 13:38:18 8 exams on these employees?  
 13:38:20 9 A No. I don't know what they had at all.  
 13:38:32 10 Q To your knowledge did the doctors produce  
 13:38:36 11 anything written at this meeting where you receive  
 13:38:36 12 this conclusion?  
 13:38:38 13 A No, sir. I don't believe they did.  
 13:38:40 14 Q Was this a lunch meeting?  
 13:38:40 15 A Yes, sir.  
 13:38:42 16 Q At this meeting was there any suggestion  
 13:38:50 17 for a follow-up study?  
 13:39:12 18 A I don't recall whether there was at that  
 13:39:16 19 meeting or not, but we had -- We had other  
 13:39:20 20 discussions with Dr. Little and the doctors as to  
 13:39:24 21 what we should do about a follow-up study.  
 13:39:24 22 Q What's your understanding about those  
 13:39:28 23 discussions?  
 13:39:30 24 A One was -- There was not an agreement, as  
 13:39:34 25 I remember, when it should be given, but we start

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13:39:40 1 in 1964 to have annual chest x-rays of all of  
 13:39:40 2 employees.  
 13:39:46 3 Q So that's three years after the -- No. It  
 13:39:48 4 would be five years after the 1959 meeting?  
 13:39:50 5 A Yes, sir.  
 13:39:54 6 Q And at this meeting with the doctors, the  
 13:39:56 7 lunch meeting, had anyone collected the medical  
 13:40:00 8 literature on asbestosis?  
 13:40:02 9 MR. MURPHY: Objection to the form  
 13:40:02 10 the question.  
 13:40:04 11 THE WITNESS: I don't recall. I  
 13:40:04 12 don't know.  
 13:40:10 13 BY MR. HEBERLING:  
 13:40:12 14 Q To your knowledge were any of the doctors  
 13:40:14 15 familiar with medical literature on asbestosis?  
 13:40:18 16 A I have no idea what the doctors were  
 13:40:18 17 familiar with.  
 13:40:22 18 Q Except for Dr. Little, who is a  
 13:40:24 19 radiologist, were all the others general  
 13:40:26 20 practitioners?  
 13:40:30 21 A Yes, sir. Well, they all had general  
 13:40:32 22 practices. The only specialist was Dr. Nelson.  
 13:40:36 23 was a surgeon.  
 13:40:54 24 Q At the meeting was there a consensus  
 13:40:56 25 what to do next?

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13-41:08 1 A Well, I don't -- I don't recall, but there  
 13-41:14 2 were -- I don't recall that there was a consensus or  
 13-41:16 3 any differing of opinions on it.  
 13-41:22 4 Q To your knowledge, after this meeting in  
 13-41:26 5 Libby, was there any effort by the company to  
 13-41:28 6 consult with specialists in Chicago, where the  
 13-41:30 7 company headquarters were?  
 13-41:34 8 A I don't know. I'm not aware of any, but I  
 9 don't know.  
 13-41:42 10 Q Then at page four, second sentence at the  
 13-41:46 11 top says, "There were people where some condition of  
 13-41:54 12 fibrosis or pulmonary emphysema showed up who had  
 13-41:56 13 been with us only a very short period of time." Do  
 13-41:58 14 you see that?  
 13-41:56 15 A Yes, sir.  
 13-41:58 16 Q Did that cause you concern?  
 13-42:00 17 A No. What this meant to us is that they  
 13-42:04 18 came to us with these conditions, and it could not  
 13-42:06 19 have been our responsibility for causing them.  
 13-42:10 20 Q And that's how you interpreted that?  
 13-42:10 21 A Yes, sir.  
 13-42:12 22 Q Was that on the advice of any medical  
 13-42:12 23 person?  
 13-42:24 24 A Well, I don't recall that it was. I think  
 13-42:28 25 it's a matter of common sense. These things don't

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13-42:32 1 happen overnight. There's always a latency period  
 13-42:34 2 of some length.  
 13-42:50 3 Q Now, again, on page four of this  
 13-42:56 4 Exhibit 33, in the middle of the page there's a  
 13-43:06 5 large paragraph about -- Let's see. There's a  
 13-43:08 6 paragraph on respirators, and here you say, "For  
 13-43:12 7 quite a few years now, our employees at the dry  
 13-43:14 8 mill, loading station and other points in the  
 13-43:18 9 operation where dust exposure is high have been  
 13-43:22 10 required to wear respirators." Were you aware as of  
 13-43:26 11 1961 that there were difficulties wearing  
 13-43:30 12 respirators in hot weather?  
 13-43:30 13 A Yes, sir.  
 13-43:34 14 Q Were you aware that it was difficult to  
 13-43:38 15 communicate while wearing a respirator?  
 13-43:38 16 A Yes, sir.  
 13-43:42 17 Q Were you aware that the respirators had  
 13-43:44 18 problems that they'd get plugged up with dust?  
 13-43:44 19 A Yes, sir.  
 13-43:52 20 Q Did you know Peter Kostic?  
 13-43:54 21 A Yes, sir.  
 13-43:56 22 Q And was he the safety supervisor for Grace  
 13-43:58 23 beginning 1963 and thereafter?  
 13-44:00 24 A Yes, sir.  
 13-44:10 25 Q Okay. Let's refer to --

13-44:12 1 MR. MURPHY: You said earlier your  
 13-44:16 2 interest was in making an accurate record. You just  
 13-44:18 3 asked him, Was he the safety supervisor from a  
 13-44:22 4 certain date thereafter? And there's been earlier  
 13-44:24 5 testimony from Mr. Lovick at some point in time  
 13-44:28 6 Mr. Eschenbach joined the company, and you asked him  
 13-44:30 7 several questions as to what their respective  
 13-44:42 8 responsibilities were once Eschenbach joined, the  
 13-44:44 9 point being that earlier today he testified that  
 13-44:48 10 Kostic was a safety engineer at some point in time  
 13-44:50 11 and Eschenbach was his supervisor.  
 13-44:52 12 MR. HEBERLING: I understand that.  
 13-44:52 13 BY MR. HEBERLING:  
 13-45:00 14 Q Let's refer to Exhibit 85.  
 13-45:02 15 A 85?  
 13-45:16 16 Q Yes. Now, at page five, just above the  
 13-45:20 17 word "Summary," the last sentence, Mr. Kostic makes  
 13-45:24 18 the statement, "Respirators are fine for short  
 13-45:26 19 periods of time, but to get a man to wear one eight  
 13-45:30 20 hours a day is next to impossible." Do you see  
 13-45:30 21 that?  
 13-45:32 22 A No, sir, I don't.  
 13-45:34 23 Q Just above "Summary," at the bottom of the  
 13-45:36 24 page, the sentence just above that.  
 13-45:38 25 A Yes, sir, I see that.

13-45:44 1 Q Would you agree with Mr. Kostic on that  
 13-45:44 2 statement?  
 13-45:44 3 A Yes, sir.  
 13-46:12 4 Q And let's refer to Exhibit 71. Who was  
 13-46:16 5 Mr. Rupp, R-U-P-P?  
 13-46:20 6 A He was the treasurer of the Zonolite  
 13-46:22 7 division of W.R. Grace & Company.  
 13-46:26 8 Q Okay. Mr. Rupp has made the statement,  
 13-46:30 9 "Employees are often inclined to remove them,"  
 13-46:32 10 meaning respirators, "when a supervisor is not  
 13-46:36 11 present." Do you see that on the first page of  
 13-46:38 12 Exhibit 71, toward the bottom?  
 13-46:38 13 A Yes, sir.  
 13-46:40 14 Q Do you agree with that?  
 13-46:44 15 A Yes, sir.  
 13-46:46 16 Q And did you know Walt Baker?  
 13-46:46 17 A Yes, sir.  
 13-46:48 18 Q Was he the mill superintendent?  
 13-46:52 19 A He was the dry mill foreman, yes, sir.  
 13-47:00 20 Q Was he ever superintendent, or was he --  
 13-47:02 21 A No, he was never superintendent, but he  
 13-47:04 22 was dry mill supervisor.  
 13-47:04 23 Q Okay. So he was management?  
 13-47:06 24 A Yes, sir.  
 13-47:12 25 Q Were you aware that he rarely wore a

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13:47:14 1 respirator?  
 13:47:16 2 A No, sir, I'm not. I don't know that.  
 13:47:22 3 Q Now, if we bring in a dozen witnesses who  
 13:47:26 4 are ex-workers who will testify that most of the  
 13:47:30 5 time the workers in the dry mill and elsewhere did  
 13:47:34 6 not wear respirators in the '60s and '70s, would you  
 13:47:36 7 dispute that?  
 13:47:38 8 MR. GRAHAM: Objection to the form of  
 13:47:38 9 the question.  
 13:47:40 10 MR. MURPHY: Objection. Lack of  
 13:47:42 11 foundation. Argumentative.  
 13:47:44 12 THE WITNESS: It was previously  
 13:47:52 13 stated that I spent maybe five percent of my time at  
 13:47:56 14 the mining and milling operation. If you brought in  
 13:47:58 15 the witnesses who worked in the mill and made a  
 13:48:02 16 statement about what happened there, I would not be  
 13:48:04 17 in a position to dispute that statement from  
 13:48:06 18 personal observation.  
 13:48:06 19 BY MR. HEBERLING:  
 13:48:10 20 Q In the 1960s did you ever tell employees  
 13:48:16 21 the reason for wearing respirators, mainly, that  
 13:48:20 22 asbestos dust is toxic?  
 13:48:22 23 MR. MURPHY: Objection to the form of  
 13:48:22 24 the question.  
 13:48:30 25 THE WITNESS: I don't recall -- I

13:50:04 1 A Yes, sir.  
 13:50:04 2 Q Was that the company's position that  
 13:50:04 3 you're stating here?  
 13:50:08 4 A No. I'm stating that this was the feeling  
 13:50:12 5 of Dr. Little, and we were relying on the judg  
 13:50:16 6 of Dr. Little rather than coming to conclusion  
 13:50:24 7 our own, because Dr. Little was much more  
 13:50:28 8 more knowledgeable about that sort of thing t  
 9 were.  
 13:50:32 10 Q Then the last sentence, "It is probable,  
 13:50:34 11 therefore, that in the next two or three years v  
 13:50:38 12 may schedule a follow-up blanket survey so:  
 13:50:46 13 can be compared." Do you see that?  
 13:50:46 14 A Yes, sir.  
 13:50:48 15 Q Did you know as of '61 that it was goi  
 13:50:48 16 to be yet two or three more years before anot  
 13:50:50 17 of x-rays was taken?  
 13:50:50 18 A I state that in that letter.  
 13:50:54 19 Q So had there been some kind of decisio  
 13:50:56 20 that point by management not to do one for t  
 13:50:58 21 three more years?  
 13:51:00 22 MR. GRAHAM: I object to the form c  
 13:51:04 23 the question in that it requires a misstatemen  
 13:51:06 24 what the letter itself says in stating that it is  
 13:51:08 25 probable.

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13:48:30 1 don't recall that employees would have been told  
 13:48:36 2 they should wear respirators for that reason.  
 13:48:38 3 BY MR. HEBERLING:  
 13:48:40 4 Q And was that true in the early '70s as  
 5 well?  
 13:48:42 6 A Probably.  
 13:48:46 7 Q Up to the time of the smoking ban in '79?  
 13:48:50 8 MR. MURPHY: Object to the form of  
 13:48:50 9 the question.  
 13:48:52 10 THE WITNESS: Probably, but there are  
 13:48:54 11 some things that shouldn't be a need to be explain.  
 13:48:58 12 You shouldn't have to tell an employee that they  
 13:49:02 13 shouldn't put their fingers to a piece of red hot  
 13:49:06 14 iron either, and we never told them that.  
 13:49:08 15 BY MR. HEBERLING:  
 13:49:10 16 Q Okay. Back to Exhibit 33. Let's see.  
 13:49:24 17 I'll eliminate a few questions here. You talk  
 13:49:36 18 about, in the middle of the page, on the x-ray  
 13:49:42 19 follow-up -- In the middle of the page, it says, "At  
 13:49:48 20 that time it was the feeling of the radiologist that  
 13:49:48 21 a minimum of two years should elapse before the  
 13:50:00 22 follow-up should be made, and it would probably be  
 13:50:02 23 better to wait a longer period where there would be  
 13:50:02 24 more likelihood of some conclusions showing up." Do  
 13:50:02 25 you see that?

13:51:10 1 Go ahead and answer it to the extent y  
 13:51:12 2 can.  
 13:51:12 3 BY MR. HEBERLING:  
 13:51:14 4 Q Do you know of any decision as to wh  
 13:51:16 5 have a follow-up exam?  
 13:51:18 6 A Well, I don't -- I don't recall  
 13:51:24 7 specifically how the decision was reached on  
 13:51:28 8 but I state this in the letter, and that would b  
 13:51:34 9 been the consensus of the management at Li  
 13:51:34 10 that's what we would do.  
 13:51:42 11 Q Okay. Let's refer to Exhibit 34, and c  
 13:51:50 12 this appear to be a letter from Mr. Pratt to y  
 13:51:58 13 dated August 11, 1961?  
 13:52:02 14 A I -- Yes. Yes.  
 13:52:04 15 Q Did you receive this at or about its da  
 13:52:04 16 A Yes, sir.  
 13:52:12 17 Q Okay. Then we'll move on to Exhibi  
 13:52:14 18 and does this appear to be a report of the B  
 13:52:18 19 Mines dated October 11, '61?  
 13:52:18 20 A Yes, sir.  
 13:52:22 21 Q Did you receive this in Libby in 1961  
 13:52:22 22 A Yes, sir.  
 13:52:26 23 Q Would that be at or about the date of  
 13:52:28 24 report?  
 13:52:28 25 A Yes, sir.

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13:52:38 1 Q Okay. Then on page two there's mention as  
 13:52:42 2 "E.D. Lovick, personnel manager". Were you, in  
 13:52:46 3 fact, administration manager, or what was your title  
 13:52:48 4 then?  
 13:52:50 5 MR. MURPHY: It's page one of the  
 13:52:52 6 report, isn't it, not page two?  
 13:52:54 7 MR. HEBERLING: Right.  
 13:52:54 8 MR. MURPHY: I think he's not looking  
 13:53:02 9 at the same page you're asking him about.  
 13:53:02 10 THE WITNESS: Well, I think probably  
 13:53:10 11 my official title in 1961 was assistant manager or  
 13:53:14 12 assistant to the manager or something like that.  
 13:53:18 13 BY MR. HEBERLING:  
 13:53:20 14 Q Okay. Then on page two of the report, in  
 13:53:24 15 the last paragraph, do you see where it says, "The  
 13:53:26 16 mill operated (on) three, eight-hour shifts a day,  
 13:53:30 17 five days a week"?  
 13:53:30 18 A Yes, sir.  
 13:53:32 19 Q Was that typical at the time?  
 13:53:34 20 A Yes, sir.  
 13:53:36 21 Q Was that typical for the 1950s?  
 13:53:38 22 A Yes, sir.  
 13:53:40 23 Q Was it typical for the 1960s?  
 13:53:40 24 A Yes, sir.  
 13:53:42 25 Q And then three lines from the bottom

13:54:02 1 Q And did you see this in Libby in April  
 13:54:02 2 1962?  
 13:54:06 3 A Not that I recall, no, sir.  
 13:54:08 4 Q Do you recall a document from the State  
 13:54:16 5 showing a sample that was 40 percent asbestos in  
 13:54:16 6 airborne dust?  
 13:54:22 7 A Well, I recall -- I recall a letter from  
 13:54:26 8 the State on the 40 percent asbestos, and I don't  
 13:54:28 9 remember specifically how it was defined, but, yes,  
 13:54:30 10 I remember that.  
 13:54:34 11 Q But you don't recall seeing this  
 13:54:36 12 particular letter, which is Exhibit 37?  
 13:54:36 13 A No, sir, I don't.  
 13:54:40 14 Q Refer to Exhibit 38, and does this appear  
 13:54:52 15 to be a letter of April 19, 1962 from John Anderson,  
 13:54:56 16 M.D., of the Montana Board of Health to Mr. Bleich,  
 13:54:58 17 manager, Zonolite?  
 13:55:00 18 A Yes, sir, I do.  
 13:55:04 19 Q And was this received in Libby in 1962?  
 13:55:06 20 A Yes, sir, I believe so.  
 13:55:12 21 Q And was that at or about the date of  
 13:55:16 22 April 19th?  
 13:55:16 23 A Yes, sir.  
 13:55:22 24 Q And did you -- I'll ask it this way. In  
 13:55:28 25 the fifth line do you see where it says, "We were

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13:55:36 1 they're talking about numbers of workers. It says  
 13:55:40 2 "Five on construction". Do you see that?  
 13:55:40 3 A Yes, sir.  
 13:55:44 4 Q Did they handle repairs and construction  
 13:55:48 5 at the mine and mill?  
 13:55:48 6 A Yes, sir.  
 13:55:54 7 Q Go to Exhibit 36. This is a letter by Ben  
 13:55:58 8 Wake to Mr. Keenan at the Occupational Health  
 13:56:02 9 Research & Training Facility in Cincinnati dated  
 13:56:04 10 March 13, 1962. Is that what it appears to be?  
 13:56:04 11 A Yes.  
 13:56:08 12 Q Did you receive this in Libby in 1962?  
 13:56:10 13 A I don't recall that I did, no, sir.  
 13:56:16 14 Q Do you think you've seen it before?  
 13:56:18 15 A I don't recall having seen it before.  
 13:56:24 16 Q When did you learn that the type of  
 13:56:28 17 asbestos in the ore at Libby was tremolite asbestos?  
 13:56:36 18 A I don't really know, but it would have  
 13:56:42 19 been -- Well, I don't really know. It would have  
 13:56:44 20 been probably in the late 1950s.  
 13:56:48 21 Q Here we go. Then let's refer next to  
 13:56:52 22 Exhibit 37, and does this appear to be a letter from  
 13:56:56 23 Mr. Keenan of the Public Health Service to Ben Wake  
 13:56:58 24 dated April 13, 1962?  
 13:57:00 25 A Yes, sir.

13:57:12 1 instructed by the board at that time to invite from  
 13:57:16 2 time to time certain of those who had not complied  
 13:57:18 3 with previous recommendations to meet with the  
 13:57:40 4 board"? Do you see that?  
 13:57:40 5 A Yes, sir.  
 13:57:44 6 Q Did you understand -- Was it your  
 13:57:46 7 understanding that the Board of Health's position  
 13:57:48 8 was that Zonolite had not complied with previous  
 13:57:50 9 recommendations?  
 13:57:54 10 A Apparently, that's what this infers, yes,  
 13:57:56 11 sir.  
 13:57:56 12 Q And did you understand that the company  
 13:57:58 13 was invited to explain itself at the next Board of  
 13:58:00 14 Health meeting?  
 13:58:02 15 A Yes, sir. I was aware of that.  
 13:58:02 16 Q Did you do so?  
 13:58:08 17 A Mr. Bleich met with them. I did not.  
 13:58:22 18 Q Do you want to take a break at this point?  
 13:58:22 19 A No.  
 13:58:32 20 Q Okay. Let me know if you do.  
 13:58:36 21 Let's refer to Exhibit 39, and does this  
 13:58:44 22 appear to be an April 19, 1962 report of an  
 13:58:50 23 industrial hygiene study by the Montana State Board  
 13:58:52 24 of Health?  
 13:58:52 25 A Yes, sir.

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13:58:34 1 Q Was this received in Libby in 1962?

13:58:34 2 A Yes, sir.

13:58:36 3 Q Was that at or about the date of the

13:58:36 4 report?

13:58:36 5 A Yes.

13:59:18 6 Q Okay. Then on the first page, third

13:59:22 7 paragraph up from the bottom, do you see where it

13:59:24 8 says, "During the time of this study, all of the

13:59:26 9 plant was in operation such that the dust samples

13:59:28 10 and other samples indicated should represent normal

13:59:30 11 working conditions"? Do you see that?

13:59:30 12 A Yes, sir.

13:59:36 13 Q To your knowledge did the company dispute

13:59:40 14 that or any other statement in this report?

13:59:42 15 A No, sir. Not to my knowledge.

13:59:48 16 Q Have you testified that you always had

13:59:52 17 notice when Ben Wake would come or the Board of

13:59:54 18 Health would come to inspect?

13:59:56 19 A I don't believe I ever testified to that.

14:00:04 20 I don't believe that -- When the Bureau of Mines

14:00:08 21 came, we never received notice. It was their

14:00:10 22 policy. And I really don't remember whether we had

14:00:14 23 notice from Ben Wake that he was coming or not. I

14:00:16 24 just don't recall what their procedure was.

14:00:34 25 Q I'm now showing you your deposition of

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14:01:34 1 Q Now, the Bureau of Mines did spot

14:01:36 2 inspections; is that correct?

14:01:36 3 A I don't know what that means.

14:02:00 4 Q Okay. We'll look at some of the documents

14:02:04 5 later.

14:02:06 6 Now, Don Riley, construction supervisor,

14:02:12 7 has testified that he always had notice ahead of

14:02:14 8 time, and there was an effort to clean up ahead of

14:02:18 9 time before an inspection. Do you dispute that?

14:02:18 10 A Yes, sir, I do.

14:02:30 11 Q Page two. Let's look at page two of

14:02:34 12 Exhibit 39, which is the 1962 report, and at the

14:02:36 13 bottom do you see "Maximum Allowable Concentration,

14:02:38 14 five"?

14:02:38 15 A Yes, sir.

14:02:22 16 Q And that would be million particles per

14:02:22 17 cubic foot?

14:02:24 18 A Yes.

14:02:28 19 Q And then is it fair so say that out of the

14:02:30 20 first 16 samples from the dry mill 15 of them

14:02:32 21 violated that standard?

14:02:34 22 MR. MURPHY: Would you read that

14:02:36 23 back, please?

24 (The reporter then read back the

25 preceding question.)

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14:00:40 1 May 27, 1992, and at page 274 we see the question,

14:00:42 2 So if a witness said, We always had advance notice

14:00:44 3 when Ben Wake would come or the Department of Health

14:00:46 4 would come to inspect us, you could not refute that

14:00:50 5 one way or the other?

14:00:52 6 And the answer, Well, I'd say that's

14:00:52 7 true.

14:00:58 8 Do you see that?

14:01:00 9 MR. GRAHAM: I'd object to -- While

14:01:04 10 the witness is studying that, I would object to two

14:01:06 11 things. One is the improper impeachment, and the

14:01:10 12 second one is that the objections that were made to

14:01:12 13 the question at that time have not been referred to

14:01:20 14 and would be repeated at this time.

14:01:20 15 BY MR. HEBERLING:

14:01:22 16 Q So I read the question and the answer.

14:01:24 17 Was that the testimony you gave at that time?

14:01:26 18 A That's what I said at that time. Perhaps

14:01:30 19 I remembered something then that I don't now, but I

14:01:32 20 really don't remember what the procedure of the

14:01:34 21 Board of Health was.

14:01:48 22 Q Now, you mentioned when the Bureau of

14:01:50 23 Mines came you didn't have advance notice; is that

24 correct?

14:01:52 25 A No, sir, we did not.

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14:03:48 1 THE WITNESS: Well, according to this

14:03:52 2 report, this file, that's what it states. However,

14:03:56 3 I would like to point out that this states the

14:04:00 4 asbestos concentrates are calculated. They are not

14:04:06 5 measured, and they're calculated by taking the

14:04:10 6 40 percent of the total of the million particles per

14:04:12 7 cubic foot of dust that was in the air, and I think

14:04:16 8 that that 40 percent is subject to question.

14:04:20 9 BY MR. HEBERLING:

14:04:20 10 Q Isn't it true that the standard would be

14:04:24 11 violated even if 20 percent asbestos was used?

14:04:26 12 A In some cases, yes.

14:04:40 13 Q Were you aware that as of 1962 the

14:04:46 14 standard in the literature was five for asbestos?

14:04:46 15 MR. MURPHY: Objection to the form of

14:04:48 16 the question.

14:04:50 17 THE WITNESS: Yes, I was aware of

14:04:50 18 that.

14:04:56 19 BY MR. HEBERLING:

14:05:00 20 Q Okay. Then page three, the first

14:05:04 21 sentence, it says, "A review of Table I indicates

14:05:08 22 concentrations of dust in the dry mill as being

14:05:12 23 extremely high and substantially over the maximum

14:05:16 24 allowable concentration for either an asbestos dust,

14:05:24 25 mica dust and even, in most cases, a nuisance



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14:05:24 1 dust." Did the company dispute that?  
 14:05:24 2 A Not to my knowledge, no, sir.  
 14:05:26 3 Q Did that statement alarm you back then?  
 14:05:30 4 A Probably, yes.  
 14:05:34 5 Q Did Mr. Bleich give you any directive  
 14:05:36 6 after he received the report?  
 14:05:38 7 A Not that I recall, no, sir.  
 14:05:52 8 Q And on the cover page for the report, do  
 14:05:52 9 you see the usual statement of confidentiality?  
 14:05:52 10 A Yes, sir.  
 14:05:52 11 Q And was this report kept so my management?  
 14:05:54 12 A I would assume so, yes.  
 14:05:56 13 Q Was it disseminated to the employees?  
 14:05:56 14 A No, sir.  
 14:06:00 15 Q Up to this point had there been any notice  
 14:06:02 16 to the employees regarding the serious hazards of  
 14:06:14 17 asbestos exposure?  
 14:06:16 18 A Not that I recall, no, sir.  
 14:06:28 19 Q Did you refer this report or its subject  
 14:06:28 20 matter to the safety committee after you received  
 14:06:28 21 it?  
 14:06:56 22 A Not to my knowledge, no, sir.  
 14:06:56 23 Q Did Mr. Bleich die in 1968?  
 14:07:02 24 A Yes, sir.  
 14:07:04 25 Q And that's when you took over as general

1 BY MR. HEBERLING:  
 14:07:22 2 Q Did you push for any improvements at the  
 14:07:24 3 plant or the areas where storage of the ore was  
 14:07:24 4 done --  
 14:07:24 5 MR. MURPHY: Object to the --  
 6 BY MR. HEBERLING:  
 14:07:26 7 Q -- that he put a hold on?  
 14:07:30 8 MR. MURPHY: Read that back, please.  
 9 (The reporter then read back the  
 10 preceding question.)  
 14:07:40 11 MR. MURPHY: Object to the form of  
 14:07:40 12 the question.  
 14:07:46 13 THE WITNESS: Well, no, sir, but I'd  
 14:07:50 14 like to clarify something about pushing for  
 14:07:54 15 improvements because of this. We were all concerned  
 14:08:04 16 about the high dust incidence and wanted to improve  
 14:08:08 17 it, but in large part no one knew how to do this.  
 14:08:16 18 So we did what we could, but there was a big lack in  
 14:08:18 19 technology and the knowledge as to how we could  
 14:08:20 20 accomplish what was desired.  
 14:08:22 21 BY MR. HEBERLING:  
 14:08:24 22 Q Did you make some inquiries to determine  
 14:08:28 23 that no one knew how to approach this?  
 14:08:34 24 A Well, certainly it was discussed with many  
 14:08:38 25 people as to what could be done, and so in that

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14:07:04 1 manager?  
 14:07:04 2 A Yes, sir.  
 14:07:04 3 Q Did he die of lung problems?  
 14:07:10 4 A Yes, sir.  
 14:07:10 5 Q As of '62, was it fair to say that  
 14:07:12 6 Mr. Bleich was in denial over the asbestos problem?  
 14:07:12 7 MR. GRAHAM: Objection to the form of  
 14:07:12 8 the question.  
 14:07:12 9 MR. MURPHY: Objection to the form of  
 14:07:14 10 the question. Lack of foundation.  
 14:07:14 11 THE WITNESS: I don't know what the  
 14:07:14 12 question means.  
 14:07:14 13 BY MR. HEBERLING:  
 14:07:16 14 Q You were with Mr. Bleich a lot as  
 14:07:16 15 assistant manager --  
 14:07:16 16 A Yes, sir.  
 14:07:16 17 Q -- and general manager? What was his  
 14:07:18 18 attitude toward the dust -- the asbestos problem in  
 14:07:18 19 the early '60s?  
 14:07:18 20 A Well, I think he was concerned about it,  
 14:07:20 21 like all of us were.  
 14:07:20 22 Q Did he recognize that it was significant?  
 14:07:20 23 A Certainly.  
 14:07:22 24 MR. GRAHAM: Same objection.  
 14:07:22 25 /////

1 sense, yes, we would have been making inquiries.  
 14:08:46 2 Q I believe you've testified that, through  
 14:08:50 3 the '60s and maybe -- If I'm wrong, please tell me,  
 14:08:56 4 but I believe you've testified that no industrial  
 14:08:56 5 hygiene engineer was consulted. Is that correct?  
 14:08:58 6 A Yes, sir.  
 14:09:06 7 Q As far as maintenance is concerned,  
 14:09:08 8 wouldn't it have been feasible to simply add more  
 14:09:10 9 men on to maintenance?  
 14:09:12 10 A Yes, and I think that that was done in  
 14:09:14 11 large part.  
 14:09:16 12 Q And since the dry mill was down at least  
 14:09:20 13 one day a week, was it feasible to do some  
 14:09:22 14 maintenance or cleanup on those days?  
 14:09:26 15 A There was that work done on those days.  
 14:09:28 16 Q Was it feasible to do more than what was  
 14:09:30 17 done?  
 14:09:32 18 MR. MURPHY: Objection to the form of  
 14:09:32 19 the question.  
 14:09:36 20 THE WITNESS: Well, I can't answer  
 14:09:38 21 that question. You can always say it's possible to  
 14:09:44 22 have done more for whatever circumstance.  
 14:09:44 23 BY MR. HEBERLING:  
 14:09:50 24 Q Did you know -- In 1965 the bigger fan was  
 14:09:52 25 bought; correct?

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14:09:52 1 A Uh-huh.  
 14:09:56 2 Q Now, as of 1962, wasn't it feasible to get  
 14:10:00 3 more fans, more ventilating capacity to get the dust  
 14:10:02 4 out of the dry mill?  
 14:10:06 5 A Possibly, yes, it could have been.  
 14:10:20 6 Q Do you recall disagreeing with Mr. Bleich  
 14:10:30 7 on the approach to dust control?  
 14:10:40 8 A No, sir.  
 14:10:44 9 Q Let's refer to page four of the 1962  
 14:10:56 10 report from the Board of Health. At the top it  
 14:11:00 11 states, "At the time of this study, there was no  
 14:11:02 12 attempt made to determine each of the locations  
 14:11:06 13 which were contributing to dustiness in the  
 14:11:10 14 building, as was done in the past study of 1958,  
 14:11:16 15 since, on the observation, it was clear that all of  
 14:11:18 16 the locations enumerated during the 1958 study were  
 14:11:22 17 still in existence and, perhaps, even others were  
 14:11:24 18 added to this group." Do you see that?  
 14:11:28 19 A Yes, sir.  
 14:11:34 20 Q Did the company dispute that statement?  
 14:11:38 21 A No, sir.  
 14:11:42 22 Q And then under "Conclusions," the first  
 14:11:50 23 sentence, do you see where it says, "As indicated in  
 14:11:52 24 the findings of this study, it appeared that no  
 14:11:56 25 progress had been made in reducing dust

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14:11:58 1 concentrations in the dry mill to an acceptable  
 14:12:02 2 level and that, indeed, the dust concentrations had  
 14:12:04 3 been increased substantially over those in the  
 14:12:06 4 past"? Do you see that?  
 14:12:10 5 A Yes, sir.  
 14:12:14 6 Q And did the company dispute that  
 14:12:18 7 statement?  
 14:12:22 8 A No, sir.  
 14:12:26 9 Q Then the next page is a cover letter for  
 14:12:30 10 the report. Do you see that? It's a letter from  
 14:12:34 11 Ben Wake to Mr. Bleich, manager, Zonolite?  
 14:12:38 12 A Yes, sir.  
 14:12:42 13 Q Was that received at Zonolite in Libby in  
 14:12:46 14 1962?  
 14:12:50 15 A Yes, sir.  
 14:12:54 16 Q And it says in the middle paragraph, "We  
 14:12:58 17 appreciate your interest and cooperation in the  
 14:13:02 18 performance of the study but are disappointed with  
 14:13:06 19 the lack of progress made in dust control." Do you  
 14:13:10 20 see that?  
 14:13:14 21 A Yes, sir.  
 14:13:18 22 Q And do you recall discussing this with  
 14:13:22 23 Mr. Wake at the time?  
 14:13:26 24 A No, sir, I don't recall.  
 14:13:30 25 Q Then let's go to Exhibit 40. Does this

14:14:26 1 Q Back then was Zonolite adding asbestos to  
 14:14:30 2 its final product, the products you described, the  
 14:14:34 3 cement and the fireproofing products?  
 14:14:38 4 A Not in Libby.  
 14:14:42 5 Q Was that done elsewhere?  
 14:14:46 6 A Yes, sir.  
 14:14:50 7 Q And so was it the purpose to have an  
 14:14:54 8 asbestos circuit to produce pure asbestos?  
 14:14:58 9 A Yes, sir. That was the object. We were  
 14:15:02 10 purchasing asbestos, and we wanted to determine two  
 14:15:06 11 things: No. 1, whether we could recover asbestos  
 14:15:10 12 from the Libby deposit, which would be a form of  
 14:15:14 13 asbestos which would be a marketable, usable  
 14:15:18 14 product, which we could use in our own plants and  
 14:15:22 15 possibly have for sale to others.  
 14:15:26 16 Q Then in the middle paragraph of that  
 14:15:30 17 letter, do you see, "Estimated capital investment  
 14:15:34 18 for this size mill, (680,000) for production of two  
 14:15:38 19 or three tons per hour?"  
 14:15:42 20 A This copy I have is very difficult to  
 14:15:46 21 read, and I don't see that. What paragraph number  
 14:15:50 22 is it in?  
 14:15:54 23 Q The third one.  
 14:15:58 24 A Oh, I see it. I see.  
 14:16:02 25 Q So that would be \$680,000 for a mill with

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14:16:10 1 an asbestos circuit in it?

14:16:18 2 A Well, the mill would be an asbestos mill.

14:16:20 3 Q It would be a separate building?

14:16:20 4 A Yes, sir.

14:16:22 5 Q And where was that going to be placed?

14:16:24 6 A We didn't know. We never did determine

14:16:26 7 that. It couldn't really be established until we

14:16:34 8 had -- until we had the circuitry worked out and the

14:16:36 9 flow sheet developed to know how much space it would

14:16:38 10 take and where would be a practical place to have

14:16:38 11 it.

14:16:42 12 Q Then at page two of this same memo, second

14:16:44 13 line, it says "From work done so far in the

14:16:46 14 laboratory". Do you see that?

14:16:50 15 A No, I don't.

14:16:52 16 Q It's the second line of page two of the

14:16:54 17 memo.

14:16:54 18 A Okay.

14:16:58 19 Q "From work done so far in the laboratory".

14:16:58 20 A Okay.

14:17:02 21 Q What I want to ask is, is this the

14:17:04 22 experimental lab down by the railroad tracks by the

14:17:04 23 edge of town?

14:17:06 24 A No.

14:17:08 25 Q Which laboratory was being used?

14:18:36 1 A The building is still there.

14:18:40 2 Q Is David Robinson still alive?

14:18:40 3 A Yes.

14:18:42 4 Q Do you know where he lives?

14:18:44 5 A Great Falls. No. He lives in Lakeside,

14:18:44 6 Montana.

14:18:46 7 Q Is he David W. Robinson?

14:18:46 8 A Yes, sir.

14:19:02 9 Q Okay. Let's refer to Exhibit 42. Does

14:19:04 10 this appear to be a memo, Lovick to Kelley, dated

14:19:04 11 October 9, 1962?

14:19:08 12 A Yes, sir.

14:19:08 13 Q Are you the author of this?

14:19:10 14 A Yes, sir.

14:19:12 15 Q The first line says, "The asbestos pilot

14:19:16 16 plant was in partial operation last week." Do you

14:19:16 17 see that?

14:19:16 18 A Yes.

14:19:18 19 Q Was that a pilot project for the asbestos

14:19:20 20 circuit that you've described?

14:19:20 21 A Yes, sir.

14:19:22 22 Q Where was that located?

14:19:26 23 A It was located up near the mill -- next to

14:19:32 24 the mill, actually, in one of the mill buildings.

14:19:34 25 Q Okay. Then let's refer to Exhibit 43.

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14:17:12 1 A A laboratory up in the mill area next to

14:17:12 2 the mill.

14:17:20 3 Q Was there also work done in the, I think

14:17:22 4 it was called -- the experimental laboratory down by

14:17:26 5 the railroad tracks by the edge of town?

14:17:26 6 A Not on this -- Not on this there wouldn't

14:17:46 7 have been.

14:17:46 8 Q Okay. Now, Les Skramstad will testify

14:17:48 9 that he worked on some kind of pure asbestos project

14:17:50 10 in the years '59 to '61 in the experimental lab down

14:17:50 11 by the railroad tracks by the edge of town. What

14:17:52 12 could that have been?

14:17:56 13 A I don't know what that would have been.

14:17:58 14 Q Did David Robinson have a role in the

14:18:02 15 asbestos project that's being discussed in these

14:18:02 16 memos?

14:18:06 17 A No, sir, he did not. There was a David

14:18:10 18 Robinson, but his function was the development of

14:18:14 19 expanding furnaces, which work was done in the area

14:18:16 20 that you're talking about.

14:18:26 21 Q Okay. And the area that I'm talking

14:18:28 22 about, is that now a woodworking company, Montana

14:18:32 23 Woodwork Company or something like that?

14:18:32 24 A Yes. Yes.

14:18:34 25 Q And so the building is still there?

14:19:40 1 Does this appear to be a memo, Lovick to Kelley,

14:19:42 2 dated December 10, 1962?

14:19:42 3 A Yes, sir.

14:19:46 4 Q Are you the author of this?

14:19:46 5 A Yes, sir.

14:19:52 6 Q Okay. The second paragraph says, "In

14:19:54 7 March of this year, it was decided that Libby would

14:19:56 8 go ahead and develop a process for concentrating

14:20:00 9 asbestos." Do you see that?

14:20:00 10 A Yes, sir.

14:20:10 11 Q And was this the same project as the

14:20:12 12 asbestos circuit?

14:20:12 13 A Yes, sir.

14:20:22 14 Q And then in this memo are you reporting to

14:20:24 15 Mr. Kelley in Chicago as to the progress of this

14:20:24 16 project?

14:20:24 17 A Yes, sir.

14:20:36 18 Q Then the last paragraph, the last half of

14:20:38 19 the last paragraph on the first page here says,

14:20:42 20 "Considering the asbestos faces which averaged

14:20:44 21 32 percent". Do you see that?

14:20:44 22 A Yes, sir.

14:20:46 23 Q What does that mean, "Asbestos faces which

14:20:48 24 averaged 32 percent"?

14:20:50 25 A Well, the asbestos which was in these

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14:20:54 1 faces, in these dikes, averaged 32 percent asbestos.  
 14:20:56 2 Q And what are dikes?  
 14:20:58 3 A A wide vein.  
 14:21:04 4 Q And then you say "A recovery figure of  
 14:21:12 5 33 1/3 percent, production to be 5,000 tons per  
 14:21:16 6 year," and that would be 5,000 tons of asbestos?  
 14:21:18 7 A Yes, sir.  
 14:21:24 8 Q And on page two of that memo, the second  
 14:21:26 9 paragraph, it says, "Our laboratory studies were  
 14:21:30 10 directed toward a program for selective flotation on  
 14:21:34 11 the tremolite from the feed. The first efforts were  
 14:21:38 12 to float the asbestos." Do you see that?  
 14:21:38 13 A Yes, sir.  
 14:21:40 14 Q Were you eventually successful in floating  
 14:21:42 15 the asbestos?  
 14:21:42 16 A Yes, sir.  
 14:21:50 17 Q And was that so that tremolite could be  
 14:21:54 18 used in lieu of other forms of asbestos in building  
 14:21:56 19 materials?  
 14:21:56 20 A Yes, sir.  
 14:22:04 21 Q And on page four of the memo, last  
 14:22:06 22 paragraph, it says, "We have been in contact with  
 14:22:10 23 several engineering firms." Do you see that?  
 14:22:12 24 A Yes.  
 14:22:16 25 Q Is it fair to say that Zonolite sought

14:23:32 1 A About then, about 1960.  
 14:23:34 2 Q '60 to '63, in there?  
 14:23:36 3 A Somewhere in there, yes.  
 14:23:40 4 Q And who was the owner of Superior Asbestos  
 5 Company?  
 14:23:40 6 A Zonolite Company.  
 14:23:42 7 Q What was the purpose of that company?  
 14:23:46 8 A It was an independent company, a  
 14:23:50 9 subsidiary that was set up for the purpose of  
 14:23:54 10 investigating this asbestos project.  
 14:24:02 11 Q Okay. And you mentioned that the asbestos  
 14:24:06 12 was not finally produced. Why was that?  
 14:24:12 13 A Well, I need a definition of that  
 14:24:16 14 question, please. When you say "Finally  
 14:24:16 15 produced" --  
 14:24:20 16 Q Did you ever go into production and sale  
 14:24:20 17 of pure asbestos?  
 14:24:24 18 A No, we did not. No, we did not.  
 14:24:24 19 Q Why not?  
 14:24:28 20 A Because it was felt there was not the  
 14:24:32 21 market for the material, that we couldn't sell the  
 14:24:36 22 material at a price which would be -- justify making  
 14:24:38 23 the capital expenditure that was required.  
 14:24:40 24 Q Okay. Then was it a factor that Libby was  
 14:24:40 25 so far away from markets?

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14:22:18 1 outside help when it needed it?  
 14:22:18 2 A Yes, sir.  
 14:22:22 3 Q Then paragraph -- No. The next exhibit is  
 14:22:24 4 44. If you'd refer to that. Does that appear to be  
 14:22:26 5 a memo from Kelley to Lovick dated February 7, 1963,  
 14:22:40 6 and did you -- Does it appear to be what I said it  
 7 is?  
 14:22:40 8 A Yes, sir.  
 14:22:44 9 Q And did you receive that on or about its  
 14:22:46 10 date?  
 14:22:46 11 A Yes, sir.  
 14:22:50 12 Q Now, in the last paragraph do you see  
 14:22:58 13 where Kelley says, "Let us get a little more steam  
 14:22:58 14 into this thing"? Do you see that?  
 14:22:58 15 A Yes, sir.  
 14:23:00 16 Q What was your understanding of what that  
 14:23:00 17 meant?  
 14:23:06 18 A Well, my understanding is what he says.  
 14:23:10 19 He had the feeling that there was not the enthusiasm  
 14:23:22 20 for getting this project going that there had been,  
 14:23:24 21 and he wanted that enthusiasm renewed.  
 14:23:28 22 Q Was there a Superior Asbestos Company  
 14:23:28 23 formed?  
 14:23:28 24 A Yes, sir.  
 14:23:28 25 Q When was that?

14:24:54 1 A Well, that would probably be a factor.  
 14:24:56 2 I'm not sure that that would have been the  
 14:25:00 3 controlling factor. As I recall, it was felt that  
 14:25:04 4 there just weren't the markets available anywhere to  
 14:25:04 5 make it.  
 14:25:06 6 Q Was it due in part --  
 14:25:08 7 MR. MURPHY: Excuse me. Had you  
 14:25:10 8 finished your answer, Mr. Lovick?  
 14:25:12 9 THE WITNESS: I think so.  
 14:25:12 10 BY MR. HEBBERLING:  
 14:25:16 11 Q Sorry. I don't mean to interrupt you.  
 14:25:18 12 A No. That's fine.  
 14:25:20 13 Q Was it due in part to the fact that  
 14:25:24 14 tremolite asbestos fibers are shorter than other  
 14:25:24 15 asbestos fibers?  
 14:25:28 16 A Well, that's one of the reasons. The  
 14:25:30 17 tremolite fibers are short, and there's not the  
 14:25:34 18 market for short fiber asbestos that there is for  
 14:25:40 19 longer fiber asbestos, such as chrysotile.  
 14:25:44 20 Q Let's refer to Exhibit 45, and does that  
 14:25:48 21 appear to be a letter from Ben Wake to Mr. Bleich,  
 14:25:52 22 manager, Zonolite, dated May 23, 1963?  
 14:25:54 23 A Yes, sir.  
 14:25:58 24 Q Was this received in Libby in May 1963?  
 14:26:00 25 A I would assume so, yes.

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1426:00 1 Q Is it probable?

1426:02 2 A Yes.

1426:12 3 Q And as part of the exhibit, there's

1426:14 4 attached a report of an industrial hygiene study by

1426:16 5 the Montana State Board of Health dated April 11,

1426:20 6 1963. Do you see that?

1426:20 7 A Yes, sir.

1426:24 8 Q And, again, on the face of the report, it

1426:26 9 states "Confidential". Do you see that?

1426:26 10 A Yes, sir.

1426:30 11 Q And was this report kept within

1426:32 12 management?

1426:34 13 A Yes, sir. To the best of my --

1426:38 14 Q Was it disseminated to the employees?

1426:38 15 A No, sir.

1426:40 16 Q And up to this point had there been any

1426:44 17 notice to the employees that asbestos in the dust

1426:46 18 was a hazardous substance?

1426:58 19 A Not that I recall, no, sir.

1427:10 20 Q Then at page two, under "Description of

1427:16 21 Operations" -- Probably the next page.

1427:16 22 A Yes, sir.

1427:22 23 Q In the middle of that paragraph, do you

1427:24 24 see where it says, "In general, there appeared to be

1427:28 25 little, if any, improvement at any point in the

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1427:30 1 plant"? Do you see that?

1427:30 2 A Yes, sir.

1427:32 3 MR. GRAHAM: Could you read the rest

1427:34 4 of the sentence?

1427:34 5 MR. HEBERLING: Okay.

1427:38 6 BY MR. HEBERLING:

1427:38 7 Q "Except, perhaps, at the voll grinder".

1427:38 8 What is a voll grinder?

1427:42 9 A It should be roll, R-O-L-L. That "V" is a

1427:42 10 misprint.

1427:44 11 Q What is a roll grinder?

1427:50 12 A Well, it's a machine to grind ore, and

1427:54 13 there are two -- made up of two rolls, generally two

1428:00 14 rolls which revolve, and the ore falls in between

1428:04 15 them, and as it goes through those rolls which are

1428:06 16 revolving, it is crushed.

1428:08 17 Q And does that cause dust?

1428:10 18 A Yes, sir.

1428:16 19 Q Then on page --

1428:20 20 MR. GRAHAM: I would object. The

1428:24 21 full sentence hasn't finally been read, but I'd just

1428:28 22 make that objection. You don't have to read it if

1428:30 23 you don't want to, but I just want to point out that

1428:32 24 it hasn't been read.

1428:34 25 ////

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1428:38 1 BY MR. HEBERLING:

1428:38 2 Q Then continuing on that page, is there a

1428:42 3 listing of first floor, fourth floor, third floor

1428:44 4 and so forth?

1428:44 5 A Yes, sir.

1428:46 6 Q And are these many of the same problems

1428:52 7 that were discussed before, in 1956, '58, '62?

1428:52 8 A Yes, sir.

1429:00 9 Q And does this include the backs being off

1429:02 10 some screens?

1429:04 11 A Yes, sir.

1429:06 12 Q And leaks here and there?

1429:10 13 MR. GRAHAM: I'd object to the form

1429:14 14 of the question because it's unclear as to whether

1429:18 15 you're referring to whether those things that you

1429:22 16 specifically mentioned are problems that occurred in

1429:26 17 precisely the same location formerly. I think the

1429:28 18 question is vague and ambiguous.

1429:30 19 MR. HEBERLING: Okay. I'll rephrase

1429:32 20 it.

1429:34 21 BY MR. HEBERLING:

1429:38 22 Q Do you see in the discussion of the second

1429:42 23 floor, "No. 34 screen still leaked badly"? Do you

1429:42 24 see that?

1429:42 25 A Yes, sir.

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1429:44 1 Q "And there was no improvement in this area

1429:46 2 since last study"? Do you see that?

1429:46 3 A Yes, sir.

1429:50 4 Q And then on the first floor, it says,

1429:50 5 "Leaks from all pipes should be stopped and

1429:54 6 ventilation applied where dust cannot be controlled

1429:56 7 by stopping." Do you see that?

1429:56 8 A Yes, sir.

1430:00 9 Q Then on page three, after the discussion

1430:02 10 of the first floor where the specific problems were,

1430:06 11 do you see this paragraph which states, "The size

1430:10 12 distribution of the dust in the air as determined by

1430:12 13 the U.S. Public Health Service indicates an average

1430:16 14 size of about 3.44 microns. It should be noted that

1430:20 15 these small diameter particles can be deposited in

1430:22 16 the deep lung tissue and are more apt to be of

1430:26 17 physiological significance than those above

1430:30 18 10 microns. In any case, over 60 percent of the

1430:34 19 particles were five microns or less, and 75 percent

1430:36 20 were less than 10 microns, all indicating a serious

1430:38 21 dust concentration, particularly in view of the

1430:38 22 quantity of asbestos known to be in the mixture."

1431:00 23 Do you see that?

1431:00 24 A Yes, sir.

1431:00 25 MR. GRAHAM: Objection. Improper

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Libby 14:31:00 1 examination.  
 14:31:00 2 BY MR. HEBERLING:  
 14:31:06 3 Q Okay. Now, do you know what size  
 14:31:12 4 particles were visible? Was that over five?  
 14:31:14 5 A No, sir, I don't know.  
 14:31:18 6 Q Was it your understanding that the State  
 14:31:24 7 is telling you that 60 percent of the particles are  
 14:31:26 8 not visible?  
 14:31:30 9 A No, sir. I don't know. I don't know what  
 14:31:36 10 they're trying to tell us.  
 14:31:34 11 Q Did you understand that the smallest ones  
 14:31:36 12 were not visible to the naked eye?  
 14:31:38 13 A Yes, sir.  
 14:31:40 14 Q But you didn't know what size that was?  
 14:31:42 15 A That's correct. I don't know what size  
 14:31:42 16 that is.  
 14:31:50 17 Q Have you testified that you always knew  
 14:31:52 18 that it was the smallest ones which are the most  
 14:31:54 19 dangerous?  
 14:32:00 20 A Well, I don't recall, but I think that  
 14:32:10 21 that's not an accurate statement. The small  
 14:32:14 22 particles are the most dangerous, but it would have  
 14:32:18 23 to be defined as to how small is small, and I can't  
 14:32:22 24 tell you what size that would be, and I don't think  
 14:32:24 25 I would ever have been able to say.

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Libby 14:32:28 1 Q Was this 1963 report when you first  
 14:32:34 2 learned that the small diameter particles are more  
 14:32:38 3 apt to be dangerous, or did you know that before  
 14:32:38 4 '63?  
 14:32:44 5 A Oh, I'm sure I knew it before '63.  
 14:32:54 6 Q Okay. Then do you see on page -- the same  
 14:32:56 7 page a table with a series of samples taken with a  
 14:33:00 8 maximum allowable concentration of five and all the  
 14:33:06 9 samples exceeding that?  
 14:33:06 10 A Yes, sir.  
 14:33:08 11 Q So all eight samples were over the  
 14:33:08 12 maximum?  
 14:33:10 13 A Yes, sir.  
 14:33:14 14 Q And did you understand that where it's  
 14:33:18 15 over the maximum that's hazardous to a worker's  
 14:33:20 16 health?  
 14:33:20 17 A Yes, sir.  
 14:33:24 18 Q Then, also, at the bottom of the table, it  
 14:33:28 19 says there's calculations on the basis of 40 percent  
 14:33:40 20 asbestos in the airborne dust. Do you see that?  
 14:33:40 21 A Yes.  
 14:33:42 22 Q Is this where you learned about the  
 14:33:46 23 40 percent test or the 40 percent result that  
 14:33:48 24 somebody got?  
 14:33:50 25 MR. GRAHAM: I'd object on the basis

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Libby 14:33:50 1 of foundation to the question.  
 14:33:52 2 Go ahead and answer.  
 14:33:54 3 THE WITNESS: Well, one of the  
 14:33:54 4 reports from the State board is where I heard  
 14:33:58 5 40 percent, and I don't know if this report is  
 14:34:00 6 first time I've heard of it or not.  
 14:34:02 7 BY MR. HEBERLING:  
 14:34:04 8 Q Okay. Then under "Conclusions and  
 14:34:06 9 Recommendations," do you see, "As noted in:  
 14:34:10 10 previous reports, considerable effort should be  
 14:34:12 11 immediately to improve the dust control"? Do  
 14:34:12 12 see that?  
 14:34:14 13 A Yes, sir.  
 14:34:18 14 Q And at the end do you see where it says,  
 14:34:22 15 "Dust control measures will have been applied  
 14:34:24 16 that the hazardous condition existing at this pla  
 14:34:28 17 is eliminated"? Do you see that?  
 14:34:28 18 A Yes, sir.  
 14:34:32 19 Q Did you have any doubt in 1963 as to wh  
 14:34:34 20 the State Board of Health was telling you?  
 14:34:38 21 A I don't think so.  
 14:34:40 22 THE VIDEOGRAPHER: Excuse me. We'  
 14:34:42 23 going to have to stop to change the tape.  
 24 MR. HEBERLING: Okay.  
 25 THE VIDEOGRAPHER: Going off the

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1 record at approximately 2:34.  
2 MR. MURPHY: We've been going for an  
3 hour and a half. Let's take a five-minute break, at  
4 least, anyway.

5 (Brief recess.)

6 THE VIDEOGRAPHER: We're back on the  
7 record at approximately 2:51.

14:51:34 8 BY MR. HEBERLING:

14:51:36 9 Q Was it about April 15, 1963 that the  
14:51:40 10 Zonolite Company was merged into W.R. Grace?

14:51:40 11 A Yes, sir.

14:51:42 12 Q And was that a stock-for-stock  
14:51:46 13 transaction?

14:51:46 14 A Yes, sir.

14:51:48 15 Q Did you own stock in Zonolite at the time?

14:51:48 16 A Yes, sir.

14:51:52 17 Q And after that, did you own stock in  
14:51:52 18 Grace?

14:51:52 19 A Yes, sir.

14:51:52 20 Q Do you still?

14:51:54 21 A No, sir.

14:51:54 22 Q When did you sell?

14:51:58 23 A Within the last ten years.

14:52:06 24 Q And after April 15, 1963, did Mr. Bleich  
14:52:08 25 continue as plant manager in Libby?

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14:52:08 1 A Yes.

14:52:12 2 Q And did Mr. Kelley continue as the person  
14:52:14 3 to whom Mr. Bleich reported?

14:52:14 4 A Yes.

14:52:18 5 Q And did you continue in the same position  
14:52:20 6 you'd been in?

14:52:20 7 A Yes, sir.

14:52:22 8 Q And that was assistant manager?

14:52:24 9 A Yes.

14:52:26 10 Q And did all other Libby employees continue  
14:52:28 11 in their positions as well?

14:52:28 12 A Yes.

14:52:34 13 Q Now, while Mr. Kelley was president of  
14:52:40 14 Zonolite approximately '55 to '63, was he kept  
14:52:42 15 informed of what was happening in Libby?

14:52:44 16 A I think so, yes, sir.

14:52:48 17 Q And did he visit Libby a few times a year?

14:52:48 18 A Yes, sir.

14:52:52 19 Q And then after April 15, 1963, I believe  
14:52:56 20 you testified that Mr. Kostic was safety supervisor?

14:52:56 21 A Yes, sir.

14:53:04 22 Q And after April of '63, was Mr. Kostic  
14:53:06 23 kept informed of what was happening in Libby?

14:53:08 24 A Yes, sir.

14:53:16 25 Q And did Mr. Kostic visit two or three

14:53:16 1 times a year?

14:53:18 2 A Well, he visited periodically. I don't  
14:53:24 3 know what kind of a schedule he was on, but, yes, he  
14:53:24 4 did.

14:53:28 5 Q Was it, generally, more than once a year?

14:53:28 6 A Yes.

14:53:30 7 Q And when he did visit, did he make a  
14:53:32 8 safety inspection?

14:53:32 9 A Yes, sir.

14:53:36 10 Q Did you ever see any reports produced by  
14:53:40 11 Mr. Kostic as to safety inspections on Zonolite?

14:53:46 12 A Well, I certainly saw reports of --  
14:53:50 13 reporting on his visit. I don't know if you'd say  
14:53:52 14 that they were results of his safety inspection, but  
14:53:54 15 in a broad sense it would be.

14:53:56 16 Q Did you see reports that he prepared about  
14:53:58 17 his visits?

14:53:58 18 A Yes, sir.

14:54:00 19 Q Do you know where these are now?

14:54:02 20 A No, sir.

14:54:06 21 Q Have you seen any in the last ten years in  
14:54:08 22 these depositions?

14:54:08 23 A I don't recall.

14:54:18 24 Q And in the years both before 1963 and  
14:54:22 25 after 1963, did you send all governmental inspection

14:54:26 1 reports to company headquarters?

14:54:26 2 A Yes, sir.

14:54:30 3 Q Was that a, Yes?

14:54:30 4 A Yes.

14:54:38 5 Q Okay. Let's refer to Exhibit 46, and does  
14:54:42 6 that appear to be a letter by Ben Wake to  
14:54:46 7 Mr. Bleich, manager, Zonolite, dated July 3, 1963?

14:54:48 8 A Yes.

14:54:52 9 Q And was this received in Libby in July  
14:54:54 10 1963?

14:54:56 11 A Yes, sir.

14:54:58 12 Q And in the first paragraph it says --

14:55:02 13 There's an examination of six vermiculite samples.  
14:55:02 14 Do you see that?

14:55:04 15 A Yes.

14:55:04 16 Q Was that the ore or the product?

14:55:08 17 A I don't know.

14:55:12 18 Q Well, the percentage tremolite came out to  
14:55:14 19 be a range of six to 22 percent. Does that seem to  
14:55:20 20 tell you that it's the ore?

14:55:24 21 A It would have to be the ore, yes.

14:55:32 22 Q Then please refer to Exhibit 47. Does  
14:55:34 23 that appear to be a letter of Dr. Woodrow Nelson to  
14:55:40 24 Zonolite's insurance company, Maryland Casualty,  
14:55:44 25 dated February 14, 1964?

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14:55:44 1 A Yes, sir.  
 14:55:44 2 Q And did you receive this in Libby in  
 14:55:48 3 February 1964?  
 14:55:54 4 A I don't recall when we would have received  
 14:55:58 5 it.  
 14:56:00 6 Q Is it likely that you received it at or  
 14:56:02 7 about its date?  
 14:56:02 8 A It's very possible, yes.  
 14:56:04 9 Q Is it likely?  
 14:56:08 10 MR. GRAHAM: Object.  
 14:56:08 11 MR. HEBERLING: It's not foundationed  
 14:56:10 12 unless he says it's probable or something.  
 14:56:14 13 MR. GRAHAM: He can't foundation it  
 14:56:16 14 unless he knows.  
 15 15 MR. HEBERLING: Right.  
 14:56:18 16 MR. GRAHAM: And he's testified he  
 14:56:20 17 doesn't know when he received it.  
 14:56:20 18 BY MR. HEBERLING:  
 14:56:20 19 Q This is a document that you've seen a  
 14:56:22 20 number of times?  
 14:56:22 21 A Yes, it is.  
 14:56:24 22 Q And is it probable that it was received in  
 14:56:28 23 1964 at Zonolite in Libby?  
 14:56:30 24 A Probably, yes.  
 14:56:32 25 MR. GRAHAM: Object as to form.

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14:56:32 1 BY MR. HEBERLING:  
 14:56:32 2 Q In paragraph one -- Now, this is regarding  
 14:56:36 3 Eitel Ludwig, a worker at Zonolite?  
 14:56:38 4 A Yes.  
 14:56:40 5 Q Did you know Mr. Ludwig?  
 14:56:40 6 A Yes, sir.  
 14:56:40 7 Q And paragraph one talks about a shortness  
 14:56:44 8 of breath on exertion. Did you observe that with  
 14:56:48 9 Mr. Ludwig as well?  
 14:56:50 10 MR. GRAHAM: Objection as to form.  
 14:56:52 11 Time and place.  
 14:56:52 12 THE WITNESS: I can't recall that I  
 14:56:58 13 specifically did on Mr. Ludwig, no.  
 14:56:58 14 BY MR. HEBERLING:  
 14:57:00 15 Q Okay. And then in the second full  
 14:57:06 16 paragraph, in the middle, it says, "A marked advance  
 14:57:10 17 in fibrosis is obvious." Do you see that?  
 14:57:12 18 A Yes.  
 14:57:14 19 Q And then page two, there's a doctor's  
 14:57:20 20 conclusion, "In my opinion his lung condition is due  
 14:57:22 21 to (pneumoconiosis), almost certainly from the  
 14:57:26 22 asbestos content of the dust." Do you see that?  
 14:57:30 23 A Yes.  
 14:57:30 24 Q And is it fair -- Was it your  
 14:57:32 25 understanding that pneumoconiosis is a dust disease?

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14:57:36 1 A Well, it would be a lung disease. I don't  
 14:57:42 2 know that I knew it was a dust disease specifi  
 14:57:50 3 Q Did you discuss this doctor's conclusion  
 14:57:54 4 with anyone after you received it, do you think  
 14:58:02 5 A I don't recall.  
 14:58:04 6 Q Was there any transfer of Mr. Ludwig f  
 14:58:06 7 his position to a safer one after this letter was  
 14:58:10 8 received?  
 14:58:12 9 MR. GRAHAM: Objection as to the fo  
 14:58:20 10 of the question because of the lack of knowlec  
 14:58:22 11 to this witness as to precisely when the letter  
 14:58:24 12 received.  
 14:58:26 13 Go ahead and answer it to the extent you  
 14:58:28 14 can.  
 14:58:28 15 THE WITNESS: To my recollection  
 14:58:34 16 there was no transfer of his duties, no, sir.  
 14:58:36 17 BY MR. HEBERLING:  
 14:58:36 18 Q Do you see where the doctor says at the  
 14:58:42 19 first part of page two, "The treatment recomm  
 14:58:44 20 at this time is that this man avoid as much as  
 14:58:46 21 possible dust exposure"?  
 14:58:48 22 A Yes, sir.  
 14:58:48 23 Q Did Mr. Ludwig die of lung problems?  
 14:58:50 24 A I don't recall what his cause of death wa  
 14:58:52 25 listed at, but Mr. Ludwig did die, yes, sir.

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14:59:02 1 Q Do you know how long he worked after  
 14:59:04 2 A No, sir. I don't remember.  
 14:59:08 3 Q Let's refer to Exhibit 48, and does that  
 14:59:10 4 appear to be a letter of one, Dr. Park, to Mr. I  
 14:59:20 5 dated April 1, 1964?  
 14:59:22 6 A Yes, sir.  
 14:59:22 7 Q Did you receive a copy of this and then  
 14:59:24 8 later respond to the questions in it?  
 14:59:40 9 A I don't recall.  
 14:59:44 10 Q Okay. We'll perhaps clear that up. Let  
 14:59:50 11 refer to Exhibit 49. Does this appear to be a  
 14:59:52 12 letter of Mr. Pratt of Western Mineral to  
 15:00:00 13 Mr. Kelley, general manager, Zonolite?  
 15:00:04 14 A Yes, sir.  
 15:00:04 15 Q And is it dated April 2, 1964?  
 15:00:08 16 A Yes.  
 15:00:08 17 Q And was this received in Libby in April  
 15:00:12 18 1964?  
 15:00:14 19 A Yes, sir.  
 15:00:14 20 Q Okay. And Mr. Pratt is the president o  
 15:00:22 21 one of Zonolite's customers?  
 15:00:24 22 A He was a vice-president.  
 15:00:28 23 Q Okay. And would you agree that he is  
 15:00:32 24 acting responsibly in inquiring about health b  
 15:00:34 25 and asking follow-up questions?

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15:00:38 1 MR. GRAHAM: Object to the form of  
 15:00:40 2 the question. Vague and ambiguous as to,  
 15:00:42 3 Responsible.  
 15:00:46 4 THE WITNESS: I would say, Yes.  
 15:00:46 5 BY MR. HEBERLING:  
 15:00:46 6 Q Okay. Then please refer to Exhibit 50,  
 15:00:54 7 and does this appear to be a letter by you to  
 15:00:56 8 Mr. Pratt dated April 9, 1964?  
 15:01:02 9 A Yes, sir.  
 15:01:02 10 Q Are you the author of this letter?  
 15:01:06 11 A Yes, sir.  
 15:01:08 12 Q And here do you answer the questions posed  
 15:01:14 13 in the letter which is Exhibit 48, which we looked  
 15:01:16 14 at earlier?  
 15:01:18 15 A Yes.  
 15:01:18 16 Q So is it likely, then, that you did  
 15:01:24 17 receive a copy of the letter of April 1, 1964, which  
 15:01:24 18 is Exhibit 48?  
 15:01:26 19 A Yes, sir.  
 15:01:44 20 Q Then Exhibit 51, does this appear to be a  
 15:01:44 21 notice to employees signed by you?  
 15:01:54 22 A Yes, sir.  
 15:01:54 23 Q Are you the author of this notice?  
 15:01:56 24 A Yes, sir.  
 15:01:58 25 Q And does this relate to an x-ray survey

15:02:16 1 our employees from the town of Libby to the  
 15:02:24 2 operation on a bus, and so we would assign the  
 15:02:24 3 people on a particular shift riding in a particular  
 15:02:30 4 bus that on Tuesday or whatever, at the termination  
 15:02:34 5 of the shift, they were to go to the hospital at  
 15:02:38 6 that time for their chest x-ray, and that would be  
 15:02:40 7 scheduled in groups of about 20.  
 15:02:42 8 Q Okay. And as far as any notice to the  
 15:02:50 9 employees, was this notice, which is Exhibit 51, the  
 15:02:54 10 extent of it?  
 15:02:54 11 MR. MURPHY: Objection to the form of  
 15:02:56 12 the question. Asked and answered.  
 15:02:58 13 THE WITNESS: Well, it would be this  
 15:03:00 14 notice plus the notice as to when they were to  
 15:03:06 15 report, and a schedule was kept as to who showed up  
 15:03:08 16 for their x-rays, and anybody that did not show up  
 15:03:10 17 when they were scheduled, if they were off work or  
 15:03:16 18 whatever reason, they were notified to report at a  
 15:03:18 19 different time.  
 15:03:18 20 BY MR. HEBERLING:  
 15:03:18 21 Q To your knowledge was any reason given to  
 15:03:22 22 the employees for the x-ray survey?  
 15:03:26 23 A Well, just to evaluate their chest x-rays.  
 15:03:28 24 Q As stated on this notice, which is  
 15:03:40 25 Exhibit 51?

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15:02:04 1 for 1964?  
 15:02:04 2 A Yes, sir.  
 15:02:08 3 Q Would this be posted, or was it sent out  
 15:02:10 4 to each employee?  
 15:02:12 5 A It would be posted -- would have been  
 15:02:12 6 posted.  
 15:02:14 7 Q Where would it have been posted?  
 15:02:16 8 A On bulletin boards in the operation.  
 15:02:18 9 Q And where were the bulletin boards back  
 15:02:20 10 then?  
 15:02:20 11 A Throughout the operation in various  
 15:02:22 12 places, in all departments. Each department had a  
 15:02:24 13 bulletin board.  
 15:02:26 14 Q And how many departments were there, four  
 15:02:30 15 or five?  
 15:02:30 16 A More than that.  
 15:02:40 17 Q So was there any other way that this --  
 15:02:40 18 that the prospective survey of chest x-rays was  
 15:02:46 19 noticed to the employees?  
 15:02:56 20 A Yes. We made arrangements with the  
 15:02:56 21 hospital to schedule so many people at a particular  
 15:02:58 22 time and from each of the various departments, and  
 15:03:04 23 the people in that department would be notified as  
 15:03:08 24 to when they were to appear at the hospital. And it  
 15:03:12 25 should be noted that we furnished transportation for

15:04:02 1 A Yes.  
 15:04:02 2 Q And was this the same procedure you  
 15:04:06 3 followed each year as far as how employees were  
 15:04:10 4 notified of chest x-rays?  
 15:04:14 5 A Yes, sir.  
 15:04:14 6 Q To your knowledge did the company ever  
 15:04:18 7 post a notice stating the reason for the chest  
 15:04:20 8 x-rays in any more detail than is here?  
 15:04:24 9 A No, sir.  
 15:04:24 10 Q And that's true all the way up to '83,  
 15:04:26 11 when you left?  
 15:04:30 12 A Yes, sir.  
 15:04:34 13 Q Let's refer to Exhibit 52. Does this  
 15:04:38 14 appear to be a letter of Ben Wake to Bud Vinion at  
 15:04:42 15 Zonolite dated May 8, 1964?  
 15:04:46 16 A Yes, sir.  
 15:04:50 17 Q Was this received at Zonolite in May 1964?  
 15:04:54 18 A I'm sure it was, yes, sir.  
 15:04:58 19 Q Then let's refer to Exhibit 53, and does  
 15:05:02 20 this appear to be a letter of Ben Wake to  
 15:05:04 21 Mr. Bleich, manager of Zonolite, dated May 11, 1964?  
 15:05:08 22 A Yes, sir.  
 15:05:12 23 Q Was this received at Zonolite in May of  
 15:05:16 24 1964?  
 15:05:20 25 A Yes, sir.

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15:06:04 1 Q And was the attached report of an  
 15:06:08 2 inspection of the dry mill also received with the  
 15:06:10 3 cover letter?  
 15:06:10 4 A I would assume so, yes, sir.  
 15:06:18 5 Q Okay. On page one, under "Description of  
 15:06:22 6 Operations," second sentence, it says, "The backs to  
 15:06:24 7 the screens have been replaced on nearly all  
 15:06:26 8 machines, and the rubbers on the screens were in  
 15:06:32 9 good shape, generally, although a few were broken."  
 15:06:32 10 Do you see that?  
 15:06:34 11 A Yes, sir.  
 15:06:36 12 Q And it says, "Those that were broken were  
 15:06:40 13 leaking dust badly." Do you see that?  
 15:06:40 14 A Yes.  
 15:06:44 15 Q And then in the next paragraph, it says,  
 15:06:50 16 "A new 35,000 CFM," cubic feet per minute, "fan  
 15:06:54 17 which discharged at ground level had been  
 15:06:56 18 installed. According to Mr. Vinion, the plant  
 15:07:00 19 expects, in addition, to have a south side fan, old  
 15:07:02 20 600, hooked up soon." Do you see that?  
 15:07:04 21 A Yes.  
 15:07:04 22 Q Okay. So the first reference to the  
 15:07:06 23 35,000 CFM fan is the big fan that was bought;  
 15:07:14 24 correct?  
 15:07:14 25 A Yes, sir.

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15:08:14 1 statements in the report?  
 15:08:16 2 MR. GRAHAM: Object to the form of  
 15:08:18 3 the question as to what is meant by the term  
 15:08:20 4 "Dispute".  
 15:08:22 5 Go ahead and answer it to the best of your  
 15:08:24 6 recollection.  
 15:08:28 7 THE WITNESS: No, sir. I don't  
 15:08:28 8 believe so.  
 15:08:30 9 BY MR. HEBERLING:  
 15:08:30 10 Q And then on the next page, do you see a  
 15:08:34 11 table of samples over the years '56, '59, '62,  
 15:08:36 12 '63, '64?  
 15:08:42 13 A Yes.  
 15:08:56 14 Q And if the standard is 20, is it fair to  
 15:08:56 15 say that almost all the samples in those years were  
 15:08:58 16 over 20?  
 15:09:00 17 MR. GRAHAM: I would object to the  
 15:09:02 18 form of the question on the basis that, if it's  
 15:09:06 19 meant the ones that are recounted here, that's one  
 15:09:12 20 thing. If it's meant all samples taken throughout  
 15:09:14 21 those years, that's another thing.  
 15:09:18 22 MR. HEBERLING: I'll restate the  
 15:09:18 23 question.  
 15:09:18 24 BY MR. HEBERLING:  
 15:09:22 25 Q Please focus on the standard for dust, not

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15:07:14 1 Q That we talked about --  
 15:07:14 2 MR. GRAHAM: Object to the form of  
 15:07:16 3 the question.  
 15:07:18 4 Go ahead.  
 15:07:20 5 BY MR. HEBERLING:  
 15:07:30 6 Q And is that the big fan we talked about  
 15:07:32 7 earlier?  
 15:07:32 8 A Yes.  
 15:07:36 9 Q And then what about this south side old  
 15:07:38 10 600 fan? Was that ever hooked up?  
 15:07:40 11 A Yes, sir.  
 15:07:42 12 Q Okay. Do you know when?  
 15:07:44 13 A No, sir, I don't know. I don't recall.  
 15:07:44 14 Q And then on page one also, paragraph  
 15:07:48 15 three, under "Description of Operations," it states,  
 15:07:50 16 "It was noted that the rafters were heavily loaded  
 15:07:54 17 with dust." "It is unfortunate that the good work  
 15:07:58 18 that has been done in the ventilation system is  
 15:08:00 19 reduced by extremely poor housekeeping." Do you see  
 15:08:04 20 that?  
 15:08:04 21 A Yes.  
 15:08:04 22 Q And then a number of other problems are  
 15:08:06 23 discussed in the report; is that correct?  
 15:08:08 24 A Yes.  
 15:08:10 25 Q And did Zonolite dispute any of these

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15:09:24 1 asbestos, but just dust, generally, of 20. Do you  
 15:09:28 2 see that?  
 15:09:28 3 A Yes.  
 15:09:30 4 Q And if that standard is 20, is it fair to  
 15:09:32 5 say that almost all the samples over the years '56  
 15:09:38 6 to '64 listed on this table exceed the standard?  
 15:09:46 7 A The thing that is missing is, the maximum  
 15:09:58 8 allowable concentration of 20 was what the allowable  
 15:10:00 9 concentration was in 1964, and I do not believe that  
 15:10:04 10 that standard was the same in previous years, back  
 15:10:10 11 to 1956. I think in previous years -- some of the  
 15:10:12 12 previous years the allowable concentration was  
 15:10:16 13 higher than 20.  
 15:10:18 14 Q And was it your understanding that the  
 15:10:20 15 standard in 1964 at 20 was based on current  
 15:10:24 16 scientific knowledge at that time?  
 15:10:26 17 A Yes, sir.  
 15:10:28 18 MR. GRAHAM: Object to the  
 15:10:28 19 foundation.  
 15:10:30 20 BY MR. HEBERLING:  
 15:10:34 21 Q Then under "Toxicology," it says, "In a  
 15:10:40 22 recent article published in the Journal of the  
 15:10:42 23 American Medical Association, April 6, 1964, by  
 15:10:48 24 Selikoff and others, it is indicated that the,  
 15:10:48 25 quote, 'Building trades insulation workers have

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15:10:52 1 relatively light, intermittent exposure to  
 15:10:56 2 asbestos. Of 632 insulation workers who entered the  
 15:11:00 3 trade before 1943 and were traced through '62, 45  
 15:11:04 4 died of cancer of the lung or pleura, whereas only  
 15:11:08 5 6.6 such deaths were expected. Three of the pleural  
 15:11:12 6 tumors were mesotheliomas." Do you see that?  
 15:11:20 7 A Yes.  
 15:11:20 8 MR. GRAHAM: Objection. Improper  
 15:11:20 9 examination.  
 15:11:20 10 BY MR. HEBERLING:  
 15:11:20 11 Q "Four mesotheliomas in a total of 255  
 15:11:22 12 deaths is an exceedingly high incidence for such a  
 15:11:24 13 rare tumor." Do you see that?  
 15:11:26 14 A Yes.  
 15:11:28 15 MR. GRAHAM: Same objection.  
 15:11:28 16 BY MR. HEBERLING:  
 15:11:28 17 Q And then at the end, "Twelve men died of  
 15:11:30 18 asbestosis."  
 15:11:32 19 MR. GRAHAM: Same objection.  
 15:11:34 20 BY MR. HEBERLING:  
 15:11:34 21 Q Okay. Now, first of all, there's  
 15:11:40 22 reference to a light, intermittent exposure to  
 15:11:42 23 asbestos in building trades workers. Do you recall  
 15:11:44 24 that?  
 15:11:46 25 A Yes.

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15:11:48 1 Q And at Zonolite you had workers with heavy  
 15:11:50 2 exposure at times; correct?  
 15:11:52 3 MR. GRAHAM: Objection. Vague and  
 15:11:56 4 ambiguous in relation to what the document he's  
 15:12:02 5 being examined on says.  
 15:12:04 6 Go ahead and answer it if you can.  
 15:12:04 7 THE WITNESS: Yes, that would be  
 15:12:08 8 correct at times.  
 15:12:10 9 BY MR. HEBERLING:  
 15:12:12 10 Q And have you also testified that at times  
 15:12:14 11 exposure in the dry mill was very great?  
 15:12:16 12 A Yes, sir, I have.  
 15:12:16 13 Q Have you also testified that the dry mill  
 15:12:20 14 was a terribly dusty place to work?  
 15:12:22 15 A I don't know that I would have used those  
 15:12:26 16 exact words, but, yes, it was a very dusty place to  
 15:12:28 17 work.  
 15:12:30 18 Q And did this continue up to 1974, when the  
 15:12:34 19 dry mill closed, that it was still a very dusty  
 15:12:38 20 place?  
 15:12:38 21 A Yes, sir, it did.  
 15:12:44 22 Q So did you understand in 1964, from the  
 15:12:50 23 excerpt in the American Medical Association article,  
 15:12:54 24 that with 45 men dying and about seven expected to  
 15:13:00 25 die of lung cancer that's a rate of six times normal

15:14:06 1 THE WITNESS: Well, I would think,  
 15:14:10 2 yes, it didn't have anything to do with Libby  
 15:14:12 3 workers, because it was a different class of people,  
 15:14:16 4 and it was different asbestos that they were exposed  
 15:14:20 5 to than what we had at Libby.  
 15:14:24 6 BY MR. HEBERLING:  
 15:14:24 7 Q So to your knowledge the company didn't  
 15:14:30 8 consider this excerpt from the American Medical  
 15:14:34 9 Association journal significant?  
 15:14:34 10 MR. MURPHY: Objection. Lack of  
 15:14:36 11 foundation. He can't speak for the company.  
 15:14:38 12 BY MR. HEBERLING:  
 15:14:40 13 Q To your knowledge?  
 15:14:40 14 A To my knowledge I can't answer that  
 15:14:42 15 question because I don't know what they considered.  
 15:14:44 16 Q Did you consider it significant?  
 15:14:50 17 A Well, I considered it worthy of  
 15:14:50 18 consideration, yes, sir.  
 15:14:52 19 Q But I take it you didn't consider it --  
 15:14:56 20 that it had any application to the workers in Libby?  
 15:15:02 21 A No. There was no direct relationship to  
 15:15:02 22 the workers in Libby from this.  
 15:15:06 23 Q So you would need something that would be  
 15:15:10 24 more in the way of a study of the workers in Libby  
 15:15:14 25 before you would consider the statement significant;

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15:15:22 1 is that correct?  
 15:15:22 2 MR. MURPHY: Objection. Vague and  
 15:15:24 3 ambiguous.  
 15:15:26 4 THE WITNESS: That would be correct,  
 15:15:28 5 yes.  
 15:15:30 6 BY MR. HEBERLING:  
 15:15:34 7 Q And in 1964 or the year after, did Grace  
 15:15:38 8 ever undertake a study of the workers in Libby as to  
 15:15:42 9 what workers may have died of?  
 15:15:46 10 A Yes.  
 15:15:46 11 Q In 1964 the company did?  
 15:15:50 12 A No, sir. Not 1964, but I believe your  
 15:16:06 13 question was, 1964 or after.  
 15:16:06 14 Q I think I said 1964 or 1965.  
 15:16:08 15 A I'm sorry.  
 15:16:08 16 MR. MURPHY: I think you were right,  
 15:16:08 17 Mr. Lovick.  
 15:16:08 18 BY MR. HEBERLING:  
 15:16:08 19 Q Okay. Let's clarify the question. In  
 15:16:10 20 1964 or '65, did Grace undertake a study of what the  
 15:16:14 21 Zonolite workers in Libby may have died of?  
 15:16:16 22 A No, sir.  
 15:16:16 23 Q Was that ever done in the 1960s?  
 15:16:22 24 A No, sir.  
 15:16:22 25 Q Was it done in the 1970s?

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15:16:24 1 A No, sir.  
 15:16:24 2 Q Was it done by a grant from W.R. Grace in  
 15:16:28 3 1983, '84?  
 15:16:30 4 A Yes, sir.  
 15:16:34 5 Q Now, the word "Mesothelioma" appears  
 15:16:38 6 here. I think I read it back to you. Was that your  
 15:16:42 7 first understanding of what mesothelioma might be,  
 15:16:46 8 1964, when you received this Exhibit 53?  
 15:16:52 9 A I don't recall when my first understanding  
 15:16:58 10 of what mesothelioma might have been -- when I would  
 15:16:58 11 have -- when it would have meant anything to me.  
 15:17:02 12 Q So in 1964 were you aware that  
 15:17:04 13 mesothelioma was, in the opinion of some, related to  
 15:17:10 14 exposure to asbestos?  
 15:17:12 15 A Yes, sir, I would have realized that in  
 15:17:14 16 '64.  
 15:17:16 17 Q Did you have any information to the  
 15:17:18 18 contrary?  
 15:17:20 19 A No, sir.  
 15:17:20 20 Q And were you aware also that lung cancer,  
 15:17:26 21 as of 1964, was related to the exposure to  
 15:17:30 22 asbestos?  
 15:17:30 23 MR. GRAHAM: I'd object to the  
 15:17:32 24 form --  
 15:17:32 25 Well, go ahead and answer if you can.

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15:17:34 1 THE WITNESS: I think I would have  
 15:17:40 2 realized that lung cancer could have been cause  
 15:17:42 3 asbestos, but not necessarily.  
 15:17:46 4 BY MR. HEBERLING:  
 15:17:46 5 Q There are other things that cause lung  
 15:17:50 6 cancer?  
 15:17:50 7 A Yes.  
 15:17:50 8 Q And did you have any information  
 15:17:52 9 indicating that lung cancer was not caused by  
 15:17:56 10 asbestos?  
 15:17:58 11 A I don't understand that question.  
 15:18:00 12 Q In 1964 did you have any information  
 15:18:02 13 indicating that lung cancer was not caused by  
 15:18:10 14 asbestos exposure?  
 15:18:10 15 A I'm sorry. I still don't understand what  
 15:18:12 16 the question is. I think it's ambiguous. It's  
 15:18:16 17 misleading.  
 15:18:20 18 Q Well, did you --  
 15:18:22 19 MR. GRAHAM: Are you asking him  
 15:18:22 20 whether there are other causes of lung cancer?  
 15:18:24 21 Because that's the way --  
 15:18:26 22 MR. HEBERLING: No.  
 15:18:28 23 MR. GRAHAM: That's where I think th  
 15:18:28 24 confusion lies, Jon.  
 25 ////

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15:18:30 1 BY MR. HEBERLING:  
 15:18:30 2 Q Okay. In 1964 you got this article from  
 15:18:32 3 the Journal of the American Medical Associati  
 15:18:36 4 excerpt, which I read.  
 15:18:38 5 A Uh-huh.  
 15:18:38 6 Q And is it fair to say that this indicates  
 15:18:40 7 a relationship between asbestos exposure and l  
 15:18:48 8 cancer?  
 15:18:48 9 A That's what this excerpt from the article  
 15:18:52 10 indicates, that there can be a relationship, yes,  
 15:18:54 11 sir.  
 15:18:54 12 Q Okay. So then I'm asking whether you l  
 15:18:58 13 any information to the contrary as of '64.  
 15:19:00 14 A No, sir.  
 15:19:06 15 MR. GRAHAM: Just so I can summa  
 15:19:08 16 that, the question and answer is that he didn't  
 15:19:14 17 any information that asbestos couldn't cause l  
 15:19:22 18 cancer or didn't cause lung cancer? Is that --  
 15:19:28 19 still confused, and I would prefer --  
 15:19:28 20 MR. HEBERLING: I think the record is  
 15:19:30 21 clear, and you can ask questions later. Okay?  
 15:19:34 22 MR. GRAHAM: Okay. Because of yo  
 15:19:34 23 invitation, I will try not to interrupt anymore f  
 15:20:04 24 clarification purposes, and the jury can unders  
 15:20:08 25 that I'll have a chance to later clarify matters,

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1520:08 1 and the reason I can't now is because counsel wishes  
 1520:08 2 to proceed with his examination at this point, and  
 1520:10 3 that's fine.  
 1520:10 4 MR. HEBERLING: Okay. And I'm asking  
 1520:12 5 what his understanding was as a result of this AMA  
 1520:12 6 article and not his opinions on what causes lung  
 1520:12 7 cancer. Okay?  
 1520:14 8 BY MR. HEBERLING:  
 1520:14 9 Q Now, after you received this excerpt of  
 1520:16 10 the American Medical Association article, was there  
 1520:16 11 an effort in Libby to obtain a copy of it?  
 1520:20 12 A Not that I recollect, no, sir.  
 1520:34 13 Q Did you receive any directives from  
 1520:34 14 W.R. Grace as a result of this report, the 1963  
 1520:36 15 State Board of Health report? 1964. Excuse me.  
 1520:38 16 A Not that I recall, no, sir.  
 1520:50 17 Q Did this report further support your view  
 1520:52 18 that the asbestos and the dust in the air was a  
 1520:52 19 serious hazard?  
 1520:56 20 A Yes. I would say that it did.  
 1520:58 21 Q Then, at the top of the next page, there's  
 1521:10 22 a further quote from the American Medical  
 1521:12 23 Association article referencing a study in  
 1521:18 24 South Africa. I'll just read it. "The recent  
 1521:24 25 demonstration by South African and British

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1521:30 1 investigators of pleural and peritoneal neoplasms  
 1521:32 2 among individuals who had chance environmental  
 1521:34 3 exposure to asbestos many years before raises the  
 1521:40 4 very important question of possible widespread  
 1521:40 5 carcinogenic air pollution.' It was also  
 1521:42 6 demonstrated that asbestos bodies were found in a  
 1521:48 7 man not employed in an industry but living next door  
 1521:50 8 to an asbestos factory." Do you see that?  
 1521:52 9 A Yes.  
 1521:54 10 MR. GRAHAM: Objection. Improper  
 1521:54 11 examination.  
 1521:54 12 BY MR. HEBERLING:  
 1521:56 13 Q Now, in 1964 Zonolite had its expanding  
 1522:00 14 plant down by the railroad on the edge of town;  
 1522:02 15 correct?  
 1522:02 16 A Yes, sir.  
 1522:02 17 Q And that was near the ball fields?  
 1522:04 18 A Yes, sir.  
 1522:06 19 Q And was there also the municipal swimming  
 1522:10 20 pool down there?  
 1522:10 21 A Yes, sir.  
 1522:10 22 Q And by 1964 Zonolite also had a bagging  
 1522:16 23 plant in that same area, did it?  
 1522:20 24 A Yes, sir.  
 1522:20 25 Q What was done at the bagging plant?

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1522:26 1 A The vermiculite concentrate was bagged and  
 1522:28 2 shipped out.  
 1522:28 3 Q What kind of bag? Were those like --  
 1522:32 4 A They were 100-pound paper bags.  
 1522:36 5 Q Okay. And in 1964 did Zonolite also have  
 1522:40 6 its experimental lab down by the railroad tracks on  
 1522:44 7 the edge of town?  
 1522:44 8 A Yes, sir.  
 1522:54 9 Q In the 1950s and '60s, were you aware that  
 1522:58 10 children played on piles of the ore near the  
 1523:04 11 railroad tracks?  
 1523:06 12 MR. MURPHY: Objection. Irrelevant  
 1523:12 13 to the issues in this case.  
 1523:12 14 THE WITNESS: We had --  
 1523:16 15 BY MR. HEBERLING:  
 1523:16 16 Q Well, let me address this objection.  
 1523:18 17 MR. HEBERLING: We're using this  
 1523:20 18 deposition for all pending cases, and it includes  
 1523:22 19 some cases where people had exposure as children  
 1523:28 20 playing on piles of it, so that's where I'm going.  
 1523:32 21 BY MR. HEBERLING:  
 1523:32 22 Q Okay. So were you aware in the '50s or  
 1523:36 23 '60s that children played on piles of the ore near  
 1523:40 24 the railroad track?  
 1523:40 25 A We had one storage bin where vermiculite

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1523:48 1 concentrate was stored, and it was an open bin, in  
 1523:52 2 effect, and there was one pile of material in there,  
 1523:58 3 and we knew that from time to time people, children  
 1524:00 4 particularly, did get on that pile of ore. We were  
 1524:04 5 not successful in keeping them away.  
 1524:08 6 Q And were you aware that the kids enjoyed  
 1524:10 7 sliding on the pile?  
 1524:14 8 MR. GRAHAM: I would object on the  
 1524:14 9 basis of the form of the question because it calls  
 1524:20 10 for speculation as to what was the state of mind of  
 1524:20 11 those people who were sliding on the pile, if there  
 1524:22 12 were any.  
 1524:22 13 MR. HEBERLING: I'll rephrase the  
 1524:24 14 question.  
 1524:24 15 BY MR. HEBERLING:  
 1524:24 16 Q Did you ever see the kids sliding on the  
 1524:28 17 pile?  
 1524:28 18 A No, sir.  
 1524:30 19 Q Did your kids ever do that?  
 1524:36 20 A Not to my knowledge, no, sir.  
 1524:34 21 Q Is it possible they went down there  
 1524:36 22 without you knowing it?  
 1524:42 23 A Certainly it's possible, but I doubt that.  
 1524:44 24 Q Did they play down by the ball fields?  
 1524:46 25 A No.

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15:24:48 1 Q Okay. Were you aware that it was a faster  
 15:24:48 2 slide down the ore pile than it would be on sand --  
 15:24:50 3 MR. GRAHAM: Objection.  
 15:24:52 4 BY MR. HEBERLING:  
 15:24:52 5 Q -- because the ore was somewhat slippery?  
 15:24:54 6 MR. GRAHAM: Object to the form of  
 15:24:56 7 the question.  
 15:24:56 8 THE WITNESS: I don't know.  
 15:24:58 9 BY MR. HEBERLING:  
 15:24:58 10 Q Were you aware that it was fun for that  
 15:25:00 11 reason?  
 15:25:00 12 MR. GRAHAM: Objection.  
 15:25:02 13 THE WITNESS: No. I don't know  
 15:25:02 14 that.  
 15:25:02 15 BY MR. HEBERLING:  
 15:25:02 16 Q Okay. Would it surprise you if a large  
 15:25:04 17 number of people in Libby could testify that they  
 15:25:06 18 played on those piles as children?  
 15:25:10 19 MR. GRAHAM: Object to the form and  
 15:25:12 20 the fact that it's an improper examination trying to  
 15:25:12 21 elicit -- present hearsay testimony to the jury.  
 15:25:22 22 Go ahead and answer it, if you can.  
 15:25:22 23 THE WITNESS: May I hear the question  
 15:25:24 24 again, please?  
 15:25:24 25 ////

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15:26:24 1 fence in the area?  
 15:26:30 2 A No, I don't believe there is a fence in  
 15:26:30 3 the area.  
 15:26:32 4 Q In the '50s and '60s, were you aware that  
 15:26:34 5 children would get the vermiculite ore and pop it b  
 15:26:42 6 setting a match to it?  
 15:26:42 7 A No, I'm not specifically aware that that  
 15:26:48 8 happened.  
 15:26:50 9 Q You never saw kids doing that?  
 15:26:50 10 A No, sir.  
 15:26:52 11 Q In the '50s and '60s, did the company ever  
 15:27:00 12 have warning signs about asbestos hazards on comp  
 15:27:00 13 property anywhere?  
 15:27:08 14 A I don't really recall when they put up  
 15:27:10 15 warning signs, but at some point there were warnin  
 15:27:16 16 signs put up, but I don't believe there were any in  
 15:27:18 17 the '50s and '60s.  
 15:27:20 18 Q Is it probable that that was the late  
 15:27:22 19 '70s?  
 15:27:24 20 A It's probable that it was in the '70s, but  
 15:27:26 21 I -- I can't be more specific than that.  
 15:27:32 22 Q And to your knowledge did the company eve  
 15:27:30 23 notify neighbors, meaning the people in the houses,  
 15:27:30 24 say, within a quarter mile of the facilities near  
 15:28:00 25 the railroad tracks near the edge of town, that

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15:28:26 1 BY MR. HEBERLING:  
 15:28:26 2 Q I'll rephrase it. Would you be surprised  
 15:28:28 3 to hear that quite a few children played on the  
 15:28:30 4 piles of vermiculite ore?  
 15:28:34 5 A I don't know what "Quite a few children"  
 15:28:40 6 means, but I would not be surprised if some children  
 15:28:40 7 hadn't played on that.  
 15:28:42 8 Q In the '50s and '60s, did the company ever  
 15:28:46 9 fence the kids out of the company areas?  
 15:28:48 10 A I don't believe so, no, sir.  
 15:28:50 11 Q In the '70s?  
 15:28:56 12 MR. GRAHAM: I would object on the  
 15:28:56 13 basis of vagueness as to what you mean by "Company  
 15:29:00 14 areas".  
 15:29:00 15 MR. HEBERLING: Okay. I'll rephrase  
 15:29:02 16 that.  
 15:29:04 17 BY MR. HEBERLING:  
 15:29:04 18 Q In the '50s and '60s, did the company ever  
 15:29:06 19 fence the kids out of the company areas where the  
 15:29:10 20 bagging plant, expanding plant and storage area was  
 15:29:16 21 near the railroad near the edge of town?  
 15:29:18 22 A No, sir.  
 15:29:18 23 Q In the '70s did they do that?  
 15:29:20 24 A No, sir.  
 15:29:24 25 Q Are you aware that even today there's no

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15:28:00 1 inhaling asbestos was a serious health hazard?  
 15:28:04 2 MR. GRAHAM: Object to the form of  
 15:28:14 3 the question based on the implication that it has.  
 15:28:14 4 Go ahead and answer the question.  
 15:28:14 5 MR. MURPHY: And, then, also, vague  
 15:28:16 6 and ambiguous in that there's absolutely no eviden  
 15:28:16 7 on this or many other similar questions as to  
 15:28:18 8 duration, intensity, type of asbestos exposure.  
 15:28:20 9 THE WITNESS: I have no knowledge of  
 15:28:28 10 any such notification, no, sir.  
 15:28:28 11 BY MR. HEBERLING:  
 15:28:28 12 Q To your knowledge did the company ever  
 15:28:32 13 notify the public in the Libby community that  
 15:28:34 14 inhaling asbestos was a serious health hazard?  
 15:28:38 15 MR. GRAHAM: Same objection.  
 15:28:48 16 MR. MURPHY: Same objection as to the  
 15:28:48 17 last question.  
 15:28:48 18 THE WITNESS: Not to my knowledge.  
 15:29:16 19 BY MR. HEBERLING:  
 15:29:16 20 Q Back to the 1964 report, page three,  
 15:29:18 21 paragraph two. I think that's the same page we w  
 15:29:18 22 still on there. Do you see where it says, "The  
 15:29:20 23 asbestos content of the material with which you an  
 15:29:20 24 working appears to provide some serious potential  
 15:29:22 25 for the development of disease, if not properly

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15:29:24 1 controlled?"

15:29:26 2 MR. GRAHAM: Is that the same

15:29:26 3 sentence that starts out "While the above situation

15:29:26 4 does not apply specifically to operations at your

15:29:26 5 plant?"

15:29:28 6 MR. HEBERLING: Yes.

15:29:30 7 MR. GRAHAM: Okay.

15:29:30 8 THE WITNESS: Yes, sir, I see that.

15:29:34 9 BY MR. HEBERLING:

15:29:36 10 Q And did you understand that as a reference

15:29:40 11 that there was a serious potential for the

15:29:42 12 development of disease, not only to the workers, but

15:29:52 13 to the community as well?

15:29:52 14 MR. MURPHY: Objection. Lack of

15:29:54 15 foundation.

15:29:56 16 THE WITNESS: No, sir. I was not

15:29:56 17 aware that there was any potential for a large --

15:30:00 18 for a problem in the community.

15:30:04 19 BY MR. HEBERLING:

15:30:04 20 Q Where the report talks about asbestos

15:30:06 21 bodies found in a man living next door to an

15:30:10 22 asbestos factory and asbestos air pollution, did you

15:30:18 23 understand that that meant a possible danger to the

15:30:22 24 community?

15:30:24 25 MR. GRAHAM: Same objection.

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15:30:26 1 MR. MURPHY: Objection. Asked and

15:30:26 2 answered. Argumentative.

15:30:28 3 THE WITNESS: You're comparing our

15:30:28 4 operation to an asbestos operation, and the amount

15:30:34 5 of asbestos or tremolite that was found in that

15:30:36 6 concentrate that would be liberated into the air in

15:30:40 7 the area would be extremely small amounts, and I

15:30:46 8 don't -- didn't believe -- understand then and I

15:30:48 9 don't believe now that it would be of such quantity

15:30:50 10 that it would be a threat.

15:30:52 11 BY MR. HEBERLING:

15:30:52 12 Q Did Grace ever test the air for asbestos

15:30:54 13 in the neighborhoods near the Grace facilities, near

15:31:02 14 the railroad tracks on the edge of town?

15:31:04 15 A Yes, they did.

15:31:06 16 Q They did?

15:31:10 17 A Yes.

15:31:10 18 Q And what was the result of that?

15:31:16 19 A As I recall, they could never come up with

15:31:18 20 any figures, any asbestos fibers being present.

15:31:20 21 Q When was that done?

15:31:22 22 A Oh, in the -- Probably in the '60s and

15:31:20 23 certainly in the '70s.

15:31:32 24 Q And have you recently seen any documents,

15:31:34 25 say, in the last five years at any of these

15:31:18 1 Q And then above "Conclusions," do you see

15:31:20 2 where it says, "In addition, the discharge of large

15:31:22 3 volumes of asbestos-laden dust at ground level sets

15:31:26 4 up a condition where all members of the plant can be

15:31:28 5 exposed in addition to those who work in the dry

15:31:32 6 mill?"

15:31:34 7 MR. MURPHY: Where are you reading

15:31:36 8 from now?

15:31:36 9 BY MR. HEBERLING:

15:31:36 10 Q Do you see that above the "Conclusions and

15:31:38 11 Recommendations" section, in the paragraph?

15:31:44 12 A I see it, yes.

15:31:46 13 Q Okay. Now, this ground level discharge,

15:31:50 14 is that related to the new 35,000 CFM fan?

15:31:56 15 A Yes, sir.

15:31:56 16 Q And did it have a stack on it?

15:34:04 17 A At that time when it was installed, it did

15:34:06 18 not have a stack, or if it had a stack, it was a

15:34:08 19 very short stack. I don't recall whether there was

15:34:12 20 a stack or not. I don't believe there was.

15:34:12 21 Q Well, was there a horizontal -- Shall we

15:34:16 22 call it a stack? A conduit that the fan discharged

15:34:20 23 out?

15:34:20 24 A As I recall, yes.

15:34:22 25 Q And did that discharge dust over into the

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15:34:24 1 service areas?  
 15:34:26 2 A It could, yes.  
 15:34:28 3 Q And what buildings were in the service  
 15:34:28 4 areas?  
 15:34:30 5 A Well, there were several buildings over  
 15:34:30 6 there. The warehouse and the machine shop and the  
 15:34:34 7 construction shop and the sheet metal shop and the  
 15:34:40 8 garage and the offices up there. They were all in  
 15:34:44 9 the service area.  
 15:34:44 10 Q And were their workers in each of these  
 15:34:48 11 buildings?  
 15:34:48 12 A Generally, yes.  
 15:34:48 13 Q And after this discharge at ground level  
 15:35:00 14 was set up, could you see dust going into the  
 15:35:00 15 service areas?  
 15:35:02 16 A I don't recall that you could see dust  
 15:35:04 17 going into them, no, sir, but I just don't remember  
 15:35:10 18 seeing any dust going in.  
 15:35:12 19 Q At this point did you know that this dust  
 15:35:16 20 was 20 or perhaps even 30 percent asbestos?  
 15:35:20 21 A No.  
 15:35:20 22 MR. MURPHY: Objection. Lack of  
 15:35:22 23 foundation.  
 15:35:22 24 THE WITNESS: No. I didn't know what  
 15:35:26 25 percentage of asbestos it would be.

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15:35:26 1 BY MR. HEBERLING:  
 15:35:28 2 Q Now, we've discussed various percentages  
 15:35:30 3 for the airborne dust, and would those same  
 15:35:34 4 percentages apply to the discharge from the ground  
 15:35:40 5 level -- the ground level discharge from the 600  
 15:35:42 6 fan?  
 15:35:42 7 MR. MURPHY: Objection. Lack of  
 15:35:44 8 foundation.  
 15:35:46 9 BY MR. HEBERLING:  
 15:35:46 10 Q And did you just nod your head?  
 15:35:46 11 A I don't know, but it would be reasonable  
 15:35:54 12 to think that the percentages would be similar.  
 15:35:54 13 Q Okay. And that range was, what, 10 to  
 15:35:58 14 30 percent?  
 15:35:58 15 A Yes, sir. That was one of the figures  
 15:36:04 16 that was used.  
 15:36:04 17 Q Okay. Now, after you got this report in  
 15:36:08 18 1964, do you recall any discussions of fixing the  
 15:36:12 19 problem by using, instead of a horizontal stack, a  
 15:36:16 20 vertical stack?  
 15:36:16 21 A Yes.  
 15:36:16 22 Q And what was the result of that?  
 15:36:18 23 A We installed a vertical stack.  
 15:36:20 24 Q And why did it take over three years to do  
 15:36:24 25 that?

15:37:24 1 didn't it happen?  
 15:37:24 2 A I don't know.  
 15:37:30 3 Q In 1964 did -- Strike that. Do you know  
 15:37:42 4 what position Mr. Kostic took on having a vert  
 15:37:48 5 stack for that big fan?  
 15:37:50 6 A No, I don't.  
 15:37:52 7 Q Okay. Then on the same page of the '64  
 15:38:08 8 report, No. 1, do you see where it says, "That a  
 15:38:10 9 careful program of housekeeping be instituted;  
 15:38:14 10 that (the) dust collected on rafters does not rea  
 15:38:22 11 the subsidence point"? Do you see that?  
 15:38:24 12 A Yes, sir.  
 15:38:24 13 MR. GRAHAM: Let me do one thing, a  
 15:38:24 14 then maybe it will keep me from interrupting.  
 15:38:28 15 objecting to your form of examination by read  
 15:38:30 16 question and then just saying, "See that?" and  
 15:38:34 17 virtue of doing that, you're getting in hearsay  
 15:38:38 18 testimony before the jury. That's what I'm  
 15:38:42 19 objecting to, and the question I have is, Can I  
 15:38:44 20 a continuing objection to that particular object  
 15:38:48 21 to the form of the question so that I won't be  
 15:38:50 22 interrupting you on that issue any longer?  
 15:38:52 23 MR. HEBERLING: Yes, you may, and I  
 15:38:54 24 understand the objection.  
 15:38:56 25 MR. GRAHAM: Okay. We disagree on

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15:38:53 1 it.  
 15:39:58 2 MR. HEBERLING: This exhibit will be  
 15:39:00 3 in evidence.  
 15:39:02 4 MR. GRAHAM: I understand.  
 15:39:02 5 BY MR. HEBERLING:  
 15:39:02 6 Q Okay. I was going to ask you, what does  
 15:39:04 7 "The subsidence point" mean with regard to the dust  
 15:39:08 8 on the rafters?  
 15:39:24 9 A Where does it say that?  
 15:39:26 10 Q Item 1.  
 15:39:30 11 MR. MURPHY: Under "Conclusions".  
 15:39:30 12 BY MR. HEBERLING:  
 15:39:32 13 Q Under "Conclusions and Recommendations".  
 15:39:54 14 A I don't know.  
 15:39:54 15 Q Okay. Then it says, "Careful cleaning of  
 15:39:58 16 the floors should be done on a sufficiently frequent  
 15:40:02 17 and routine basis as to prevent dust from falling  
 15:40:06 18 off the rafters or from collecting on the floor to  
 15:40:08 19 such a degree that this dust is a contributor to the  
 15:40:10 20 overall load generated by the machines." Do you see  
 15:40:14 21 that?  
 15:40:14 22 A Yes.  
 15:40:14 23 Q And in the dry mill, if the floors were  
 15:40:18 24 not to contribute to the overall load, that would  
 15:40:22 25 require frequent cleaning, wouldn't it?

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15:40:24 1 A Yes.  
 15:40:28 2 Q And at this point, in 1964, had a vacuum  
 15:40:32 3 been purchased as yet?  
 15:40:32 4 A I don't recall.  
 15:40:40 5 Q Then No. 2 talks about putting in this  
 15:40:44 6 additional fan by the first of September, '64?  
 15:40:52 7 A Yes.  
 15:40:52 8 Q Okay. And then at the cover page for the  
 15:41:12 9 report, I don't see a "Confidential" sticker or  
 15:41:26 10 stamp. Was this report also kept confidential by  
 15:41:28 11 management?  
 15:41:28 12 A I don't believe there's a cover page here,  
 15:41:36 13 but I would say, yes, that it was kept confidential.  
 15:41:40 14 Q And up to this point, had there been any  
 15:41:42 15 notice to the employees regarding the dangers of  
 15:41:48 16 inhaling asbestos?  
 15:41:48 17 A No. Not specifically I don't believe, no,  
 15:41:58 18 sir.  
 15:41:58 19 Q Then please refer to Exhibit 54, and does  
 15:41:58 20 this appear to be a "Report of Spirometry Tests,  
 15:42:02 21 Libby Zonolite Employees" by Dr. Nelson?  
 15:42:12 22 A Yes, sir.  
 15:42:16 23 Q And did you receive this in Libby in 1964?  
 15:42:24 24 A This -- I don't see Dr. Nelson's name on  
 15:42:34 25 here anywhere.

15:44:20 1 don't know whether this would have been the 1964  
 15:44:30 2 program or not, but on the heading of the paper, it  
 15:44:34 3 says, "In May and June of 1964, spirometry  
 15:44:40 4 measurements ... were carried out on 140 men  
 15:44:46 5 employed at Zonolite in Libby." So there's every  
 15:44:48 6 indication that that would have based on the 1964  
 15:44:54 7 x-rays.  
 15:44:54 8 Q Then at page two, under Item 2, do you see  
 15:44:58 9 where it says, "30 employees of the 140 had definite  
 15:45:04 10 pneumoconiotic changes on x-ray"?  
 15:45:08 11 A Yes, sir.  
 15:45:08 12 Q And is that, basically, the same as  
 15:45:10 13 abnormal?  
 15:45:12 14 MR. MURPHY: Objection. Lack of  
 15:45:14 15 foundation. He's not a doctor.  
 15:45:16 16 THE WITNESS: I don't know what  
 15:45:18 17 "Abnormal" means.  
 15:45:26 18 BY MR. HEBERLING:  
 15:45:26 19 Q And then would such changes in your  
 15:45:30 20 understanding include fibrosis?  
 15:45:38 21 MR. MURPHY: Objection. Lack of  
 15:45:38 22 foundation.  
 15:45:46 23 THE WITNESS: Yes, it would include  
 15:45:48 24 fibrosis, I would say.  
 25 ////

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15:45:52 1 BY MR. HEBERLING:  
 15:45:56 2 Q And then of the 30 abnormals or the 30  
 15:46:04 3 with definite changes on x-ray, do you see where  
 15:46:08 4 Dr. Nelson says, "Only four of the 30 men in the  
 15:46:12 5 pneumoconiotic group had forced vital capacity of  
 15:46:18 6 above 90 percent," meaning -- and is it your  
 15:46:20 7 understanding that that's -- above 90 percent would  
 15:46:22 8 be normal?  
 15:46:24 9 A I don't see that.  
 15:46:32 10 Q Let's go back to the first page, then.  
 15:46:38 11 Four lines up from the bottom, do you see where it  
 15:46:42 12 says, "FVC percentage and FEV1 percentage of less  
 15:46:46 13 than 90 percent was considered probably abnormal?"  
 15:46:52 14 A Yes, I see that.  
 15:46:58 15 Q Okay. So we have a group of 30 men with  
 15:47:02 16 definite changes, and out of that 30 only four had  
 15:47:14 17 normal pulmonary function tests? Do you see that?  
 15:47:14 18 A Yes, sir.  
 15:47:16 19 MR. MURPHY: Well, I object. You  
 15:47:18 20 made the statement and asked him, Did you see that?  
 15:47:20 21 and the statement that you made doesn't appear  
 15:47:22 22 anywhere in this document.  
 15:47:24 23 MR. HEBERLING: Okay. I'll rephrase  
 15:47:24 24 the question.  
 25 ////

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15:48:30 1 corporation is paying for both lawyers.  
 15:48:39 2 MR. MURPHY: That doesn't have  
 15:48:52 3 anything to do with it, but rather than waste more  
 15:48:54 4 time debating among ourselves, my point simply w  
 15:48:56 5 Could I hear the question?  
 6 THE REPORTER: I can go back and  
 7 look.  
 15:49:08 8 MR. HEBERLING: I'll restate it, if  
 15:49:08 9 that's easier.  
 10 THE REPORTER: It went up off my  
 11 screen.  
 15:49:20 12 BY MR. HEBERLING:  
 15:49:32 13 Q We went through the percentages, and was  
 15:49:34 14 it -- And then I asked, Did you see that? There w  
 15:49:38 15 an objection, and then I followed by saying, Was  
 15:49:42 16 that your understanding? meaning that there were  
 15:49:46 17 only four of the 30 men in the pneumoconiotic gro  
 15:49:50 18 which had normal pulmonary function tests.  
 15:49:52 19 MR. GRAHAM: I still have the same  
 15:49:54 20 objection as I made to the earlier question.  
 15:49:56 21 THE WITNESS: Well, four of the men  
 15:49:58 22 in that group had above 90 percent of standard, bu  
 15:50:00 23 those 30 were also included in the 140 people, so  
 15:50:02 24 you could say that only four of the 140 people  
 15:50:04 25 involved had -- 26 of the 140 had less than

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15:51:26 1 BY MR. HEBERLING:  
 15:51:28 2 Q Did you understand that as what the doctor  
 15:51:32 3 is saying here?  
 15:51:34 4 MR. GRAHAM: I'll still object on the  
 15:51:38 5 basis that "Probably abnormal" doesn't mean  
 15:51:44 6 abnormal, and there might be normal -- Anyway, the  
 15:51:46 7 language is vague and ambiguous and undefined.  
 15:51:50 8 Go ahead and answer it if you can, Earl.  
 15:51:52 9 MR. MURPHY: Frankly, I'm lost, so I  
 15:51:56 10 don't know where the witness might be. Could we  
 15:51:58 11 hear the question he's supposed to answer now,  
 15:51:58 12 please?  
 15:48:00 13 MR. HEBERLING: May I have a  
 15:48:02 14 continuing objection to having two attorneys object  
 15:48:04 15 at a deposition?  
 15:48:04 16 MR. GRAHAM: We're representing  
 15:48:06 17 different people.  
 15:48:08 18 MR. MURPHY: Of course you can, but  
 15:48:14 19 it's not unusual, and it's been my experience, when  
 15:48:18 20 you are suing a corporation and you have a witness,  
 15:48:20 21 that the corporation be represented and the witness  
 15:48:24 22 be represented by different people. It's not an  
 15:48:26 23 uncommon event, but, anyway, you made your  
 15:48:28 24 objection.  
 15:48:28 25 MR. HEBERLING: The point is that the

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15:50:02 1 standard, 90 percent.  
 15:50:02 2 BY MR. HEBERLING:  
 15:50:04 3 Q Okay. And that's your understanding?  
 15:50:04 4 A Yes.  
 15:50:08 5 Q Now let's read the next sentence. "Only  
 15:50:20 6 three of" -- Let's see. I guess we aren't told for  
 15:50:24 7 the other group, the 110, how many had abnormal  
 15:50:26 8 pulmonary function tests. Do you see any indicat  
 15:50:30 9 of how many from that group are abnormals?  
 15:50:46 10 A I read this as -- on the non-  
 15:50:50 11 pneumoconiotic group, that 90 percent of the 110  
 15:51:04 12 employees were standard or above.  
 15:51:08 13 Q Well, is it possible that that's an  
 15:51:08 14 average?  
 15:51:10 15 MR. MURPHY: Objection to the form of  
 15:51:10 16 the question.  
 15:51:10 17 BY MR. HEBERLING:  
 15:51:12 18 Q I don't think we'll resolve this here. We  
 15:51:14 19 don't need to --  
 15:51:16 20 A I don't think "Average" means anything.  
 15:51:22 21 Q Okay. Then at the bottom of page two, do  
 15:51:24 22 you see where the doctor says, "I would conclude  
 15:51:26 23 that a serious hazard for pneumoconiosis exists to  
 15:51:26 24 the employees at Libby"? Do you see that?  
 15:51:40 25 A Yes.

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15:51:42 1 Q Did Grace dispute that conclusion?

15:51:46 2 A Not that I recall, no.

15:52:06 3 Q And the version of this report that we

15:52:10 4 have as Exhibit 54 is two pages. At past

15:52:14 5 depositions or at any other time, have you seen a

15:52:16 6 longer version of this report, particularly

15:52:16 7 attaching names of workers?

15:52:18 8 A Not that I recall.

15:52:42 9 Q And after receiving this report, did Grace

15:52:42 10 do anything to notify the 26 workers who were

15:52:44 11 abnormal on both the x-rays and the pulmonary

15:52:44 12 function test?

15:52:44 13 A Well, they were notified as to what the

15:52:46 14 results of their tests were.

15:52:48 15 Q Do you know that? Do you have personal

15:52:50 16 knowledge that each one of the 26 was notified?

15:52:56 17 A Well, I guess I don't have personal

15:53:00 18 knowledge that every one of them were, but it would

15:53:00 19 be my belief that they were.

15:53:02 20 Q And is your belief -- Is it your belief

15:53:06 21 based upon the notice by sending the copies to the

15:53:08 22 family doctors?

15:53:08 23 A Yes, sir.

15:53:10 24 Q Through that procedure?

15:53:10 25 A Yes, sir.

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15:53:16 1 Q Okay. Was there any attempt to move these

15:53:24 2 26 to jobs with less asbestos exposure?

15:53:24 3 A No, sir.

15:53:32 4 Q Then let's refer to Exhibit 55. Does this

15:53:36 5 appear to be a letter of Ben Wake to Robert Vinion

15:53:40 6 dated June 30, '64?

15:53:40 7 A Yes, sir.

15:53:42 8 Q Did you receive that in Libby in

15:53:44 9 June 19 -- well, in July 1964?

15:53:46 10 A Yes, sir.

15:53:54 11 Q Then let's refer to Exhibit 56, and does

15:53:58 12 this appear to be a letter of Dr. Nelson to Joseph

15:54:02 13 Kelley, president of Zonolite, dated August 25,

15:54:04 14 1964?

15:54:04 15 A Yes, sir.

15:54:08 16 Q And did you receive this in Libby in

15:54:10 17 August 1964?

15:54:12 18 A I don't know.

15:54:16 19 Q Is it probable?

15:54:16 20 A I don't know.

15:54:22 21 Q Have you seen this before?

15:54:26 22 A Yes, I have, but I don't know when I saw

15:54:26 23 it the first time.

15:54:36 24 Q Do you recall a follow-up effort by

15:54:46 25 Dr. Nelson to do a further study of the workers at

15:54:42 1 Libby who had abnormal chest x-rays or pulmonary

15:54:54 2 function tests?

15:55:02 3 A Well, I recall -- I recall Dr. Nelson

15:55:10 4 proposing that further studies be done on -- I think

15:55:14 5 on all employees in Libby. I don't think it would

15:55:18 6 have been confined to only the people with pulmonary

15:55:26 7 problems or spirometer problems, but I'm not certain

15:55:26 8 of that.

15:55:48 9 Q Were you consulted by Mr. Kelley or

15:55:50 10 somebody from the Chicago office with regard to

15:55:56 11 Dr. Nelson's efforts to set up a further study?

15:56:04 12 A I don't recall that I was, no, sir.

15:56:06 13 Q Do you recall a meeting regarding

15:56:14 14 Dr. Nelson's findings where the consensus of local

15:56:18 15 medical opinion was that an important increased

15:56:24 16 incidence of chronic respiratory diseases existed in

15:56:26 17 Zonolite employees?

15:56:28 18 A No, I don't recall such a meeting.

15:56:44 19 Q Is Joseph Kelley still alive?

15:56:46 20 A No, sir.

15:57:14 21 Q Do you recall Dr. Nelson suggesting and

15:57:20 22 offering to carry out a further study of lung

15:57:22 23 function on the employees?

15:57:26 24 A Yes, but -- I do, but I don't recall when

15:57:30 25 I first heard of this. I don't remember if it was

15:57:34 1 at the time or somewhat later that I heard about it,

15:57:36 2 but I do recall him offering to do this.

15:57:44 3 Q Were you aware of an offer by Dr. Nelson

15:57:48 4 to do this work in Chicago without pay but with

15:57:52 5 expenses for the work paid by Grace?

15:57:56 6 A Yes. That's what I recall.

15:57:58 7 MR. GRAHAM: Including the loss --

15:58:02 8 income lost for the time involved?

15:58:02 9 BY MR. HEBERLING:

15:58:06 10 Q Was Dr. -- Is it your understanding that

15:58:08 11 Dr. Nelson was asking for some compensation for his

15:58:08 12 time?

15:58:16 13 A Well, when he proposed -- When he proposed

15:58:20 14 following this up, he stated that he would have to

15:58:22 15 go for additional training and he should be

15:58:26 16 compensated for loss of income during the period

15:58:30 17 that he was away from his practice. So I don't know

15:58:32 18 if you define that as compensation or not, but that

15:58:34 19 was what his proposal was.

15:58:44 20 Q Let's refer to Exhibit 57, and does this

15:58:52 21 appear to be a letter by Dr. Nelson to -- No. A

15:59:00 22 letter from F.W. Rupp, treasurer, to Dr. Nelson?

15:59:02 23 A Yes, sir.

15:59:12 24 Q And is it likely that this was dated 1964

15:59:16 25 based on the content of the letter?

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15:59:18 1 A Yes, sir.  
 15:59:26 2 Q Who was -- Let's see. I think I asked who  
 15:59:28 3 Mr. Rupp was. You explained that he was the  
 15:59:30 4 treasurer of the company?  
 15:59:30 5 A Who?  
 15:59:32 6 Q Mr. Rupp was the treasurer of the company?  
 15:59:40 7 A Yes. Yes. Yes.  
 15:59:44 8 Q Did you see this letter at Libby at  
 15:59:46 9 Zonolite in 1964?  
 15:59:46 10 A I don't recall.  
 15:59:50 11 Q Now, Maryland Casualty Company is referred  
 15:59:54 12 to here. Was that Zonolite's insurance company?  
 15:59:58 13 A Yes. They handled our industrial  
 16:00:00 14 accident -- industrialization insurance.  
 16:00:14 15 Q And do you recall Dr. Nelson's proposal  
 16:00:14 16 for further work being referred to the insurance  
 16:00:14 17 company?  
 16:00:14 18 A No, I don't recall.  
 16:00:18 19 Q You didn't have anything to do with that  
 16:00:18 20 part of it?  
 16:00:18 21 A No. No.  
 16:00:46 22 Q Let's refer to Exhibit 61. Does this  
 16:00:48 23 appear to be a letter by Dr. Nelson dated  
 16:00:56 24 November 20, 1964 to Mr. Kelley, Zonolite executive?  
 16:00:58 25 A Yes, sir.

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16:01:00 1 Q And did you see this letter in Libby in  
 16:01:02 2 1964?  
 16:01:04 3 A I don't recall. I don't recall whether I  
 16:01:04 4 did or not.  
 16:01:08 5 Q Is it your recollection that you were not  
 16:01:12 6 copied in on this correspondence with Dr. Nelson?  
 16:01:16 7 A Yes. That's a true statement. I don't  
 16:01:18 8 recall being copied in.  
 16:01:20 9 Q And do you recall discussing Dr. Nelson's  
 16:01:24 10 proposal with him in '64?  
 16:01:28 11 A No, I don't recall.  
 16:01:32 12 Q Do you recall Dr. Nelson recommending  
 16:01:34 13 Dr. Thatcher Hubbard of Spokane as being qualified  
 16:01:40 14 to do the study?  
 16:01:42 15 A Yes, sir. I've seen this letter somewhere  
 16:01:44 16 at some time, and I don't remember what point in  
 16:01:46 17 time it was. I don't remember whether it was then  
 16:01:48 18 or whether it would have been in connection with  
 16:01:48 19 some of these depositions.  
 16:01:54 20 Q Then let's refer to Exhibit 62, and does  
 16:02:02 21 this appear to be a memo from George Blackwood to  
 16:02:04 22 J.A. Kelley?  
 16:02:04 23 A Yes, sir.  
 16:02:12 24 Q And who was Mr. Blackwood in 1964?  
 16:02:14 25 A He was president of Dewey-Almy Chemical

16:04:18 1 Q Did you receive that in Libby in October  
 16:04:20 2 '64?  
 16:04:22 3 A Yes, sir.  
 16:04:26 4 Q Okay. Then on page one do you see wh  
 16:04:30 5 four samples were taken of the air in the dry r  
 16:04:30 6 A Yes.  
 16:04:36 7 Q And does it appear that two of them wer  
 16:04:36 8 over the standard?  
 16:04:36 9 A Yes, sir.  
 16:04:50 10 Q Then on page two, at the bottom, do you  
 16:04:52 11 see where it says, "It was further noted that th  
 16:04:56 12 dust discharged at ground level from the main  
 16:05:00 13 collection fan was continuously contaminating  
 16:05:02 14 whole plant work area and needs to be raised  
 16:05:04 15 substantially so that the dust-laden air dischar  
 16:05:10 16 substantially above the plant area or that clear  
 16:05:12 17 be provided"? Do you see that?  
 16:05:12 18 A Yes, sir.  
 16:05:14 19 Q Now, is this the same problem of groun  
 16:05:16 20 level discharge that we discussed before?  
 16:05:18 21 A Yes, sir.  
 16:05:28 22 Q Then on page two is there a list of dust  
 16:05:32 23 producers with particular machine numbers a  
 16:05:32 24 forth? Do you see that?  
 16:05:32 25 A Yes.

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16:01:56 1 Q Then let's refer to Exhibit 59. Does that  
 16:03:58 2 appear to be an excerpt from a newspaper article?  
 16:04:02 3 A Yes, sir, it appears to be a copy of a --  
 16:04:05 4 Q Was this sent to you in Libby in 1964?  
 16:04:08 5 A I believe not. It was sent to -- It was  
 16:06:12 6 sent to R.A. Bleich, but I don't ever remember  
 16:06:14 7 seeing it.  
 16:06:20 8 Q If it was sent to R.A. Bleich, is it  
 16:06:22 9 likely that it arrived and was received by him?  
 16:06:30 10 A Yes.  
 16:06:32 11 MR. MURPHY: Could we take a very  
 16:06:34 12 short break?  
 16:06:34 13 MR. HEBERLING: Sure.  
 16:06:34 14 MR. MURPHY: We've been going about  
 16:06:38 15 an hour and twenty minutes.  
 16:06:40 16 THE VIDEOGRAPHER: Going off the  
 16:06:40 17 record at 4:06.  
 16:06:46 18 (Brief recess.)  
 16:14:38 19 THE VIDEOGRAPHER: We're back on the  
 16:14:42 20 record approximately 4:14.  
 16:14:44 21 BY MR. HEBERLING:  
 16:14:58 22 Q Let's refer to Exhibit 60, and does this  
 16:15:02 23 appear to be a letter from Mr. Park of the insurance  
 16:15:08 24 company to W.R. Grace dated November 5, 1964?  
 16:15:14 25 A Yes.

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16:15:16 1 Q And I'll represent to you that it's  
 16:15:24 2 difficult to read, but it relates to respirators,  
 16:15:32 3 and it refers to Wilders, Kentucky. Do you see  
 16:15:32 4 that?  
 16:15:32 5 A Yes.  
 16:15:36 6 Q Did you receive this or a similar letter  
 16:15:36 7 relating to Libby --  
 16:15:38 8 A No.  
 16:15:40 9 Q -- and the use of respirators?  
 16:15:42 10 A No. Not that I recall.  
 16:15:44 11 Q And let's refer to Exhibit 63, and does  
 16:16:00 12 this appear to be a letter of Mr. Park of the  
 16:16:10 13 insurance company, once again, to W.R. Grace, again,  
 16:16:14 14 relating to Wilders, Kentucky and respirators?  
 16:16:16 15 A Yes.  
 16:16:20 16 Q Did you receive this or a similar letter  
 16:16:24 17 relating to use of respirators in Libby in 1964,  
 16:16:26 18 '65, early '65?  
 16:16:38 19 A Not that I recall. I believe not.  
 16:16:40 20 Q Do you recall receiving any kind of  
 16:16:40 21 indication of a respirator program from the  
 16:16:40 22 insurance company, say, in early '65?  
 16:16:42 23 A No, sir.  
 16:17:02 24 Q Then let's refer to Exhibit 65. Does this  
 16:17:04 25 appear to be a memo from Mr. Bleich to Mr. Kelley

16:18:32 1 A Yes, sir.  
 16:18:36 2 Q Could you still see dust as the trucks  
 16:18:40 3 came down the roads, generally, in dry days?  
 16:18:48 4 A At times, yes.  
 16:18:52 5 The water, of course, evaporated very  
 16:18:54 6 fast, and the oil was longer lasting. That's why it  
 16:18:56 7 would make a difference.  
 16:19:04 8 Q And were you aware in the '60s that dust  
 16:19:10 9 on the roads would include some asbestos dust?  
 16:19:10 10 A Yes, sir.  
 16:19:16 11 Q And would that be from ore falling off the  
 16:19:16 12 trucks?  
 16:19:20 13 A Well, the roads were right over the --  
 16:19:22 14 right over the pit itself, right -- the material  
 16:19:28 15 that was being mined, and so it would -- The  
 16:19:32 16 asbestos found in the mine would also be where the  
 16:19:34 17 roads were.  
 16:19:38 18 Q And is it likely that there was some  
 16:19:40 19 asbestos in the dust on the road down to the river  
 16:19:40 20 as well?  
 16:19:44 21 A It's very possible there could have been  
 16:19:52 22 some asbestos in that dust, yes.  
 16:19:54 23 Q Then paragraph three on the first page, it  
 16:19:56 24 says, "The actual digging and loading is no  
 16:20:02 25 problem." Did you agree with that statement when it

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16:20:04 1 was made?  
 16:20:04 2 A Yes, sir.  
 16:20:08 3 Q So you agreed that there was really no  
 16:20:12 4 problem as to digging and loading as far as creating  
 16:20:12 5 dust?  
 16:20:12 6 A Yes, sir.  
 16:20:16 7 Q Isn't it true that when the ore is loaded  
 16:20:20 8 into the trucks dust is created?  
 16:20:24 9 A Not in the mine, no, sir. Not generally,  
 16:20:28 10 because it states here that that ore is always  
 16:20:30 11 slightly damp.  
 16:20:34 12 Q And when the trucks were dumped at the  
 16:20:38 13 transfer point, was there dust then?  
 16:20:38 14 A Very little.  
 16:20:38 15 Q If there's ore by the transfer point and a  
 16:21:04 16 worker watching how the truck is dumping at the  
 16:21:06 17 transfer point -- Can you envision that?  
 16:21:08 18 A Uh-huh.  
 16:21:10 19 Q Okay. Under those circumstances would the  
 16:21:16 20 worker be standing in some asbestos dust?  
 16:21:16 21 A Very possibly --  
 16:21:18 22 MR. MURPHY: Objection. Your  
 16:21:20 23 question is hypothetical.  
 16:21:22 24 THE WITNESS: Very possibly the  
 16:21:24 25 ground that he was standing on could contain

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16:21:30 1 asbestos, but as far as standing in asbestos dust, I  
 16:21:34 2 don't know whether that would be true.  
 16:21:44 3 BY MR. HEBERLING:  
 16:21:50 4 Q Then still on page one, it says, The  
 16:21:52 5 Mill. "The dust problem in the mill is entirely  
 16:22:00 6 concentrated in the dry mill." Did you agree with  
 16:22:02 7 that statement?  
 16:22:02 8 A Yes, sir.  
 16:22:04 9 Q And does that mean that there was no dust  
 16:22:10 10 problem in the wet mill or the mill feed bins?  
 16:22:12 11 A Yes, sir.  
 16:22:14 12 Q You considered that there was no problem  
 16:22:14 13 in the wet mill?  
 16:22:14 14 A Yes, sir.  
 16:22:16 15 Q And there were no dusty areas in the wet  
 16:22:18 16 mill?  
 16:22:18 17 A No, sir.  
 16:22:22 18 Q If workers testify -- workers who worked  
 16:22:24 19 in there in the '60s testified that there were --  
 16:22:26 20 there was dust in the wet mill, would you dispute  
 16:22:28 21 that?  
 16:22:30 22 MR. MURPHY: Objection.  
 16:22:30 23 Hypothetical.  
 16:22:32 24 THE WITNESS: I'd have to hear their  
 16:22:36 25 testimony as to where the dust was supposed to have

16:24:04 1 Q There's 8,000, 12,000, 15,000, 40,000, and  
 16:24:08 2 if we add those up, that would be 75,000 cubic feet  
 16:24:12 3 per minute total ventilating capacity for the dry  
 16:24:12 4 mill?  
 16:24:12 5 A Yes.  
 16:24:16 6 Q To your knowledge was that a correct  
 16:24:18 7 statement of the ventilating capacity at the time?  
 16:24:20 8 A Yes, I believe so.  
 16:24:30 9 Q And did this 75,000 ventilating capacity  
 16:24:34 10 remain the same up until the dry mill closed?  
 16:24:42 11 A I believe it would have, basically,  
 16:24:44 12 remained the same, yes.  
 16:24:54 13 Q Then page two, paragraph two, the second  
 16:24:58 14 sentence, do you see where it says, "However, in no  
 16:25:00 15 instance" --  
 16:25:00 16 A Excuse me. I'm sorry.  
 16:25:02 17 MR. MURPHY: I don't have a  
 16:25:02 18 page two.  
 16:25:04 19 THE WITNESS: I don't have a  
 16:25:04 20 page two.  
 16:25:08 21 MR. GRAHAM: I think what happened is  
 16:25:10 22 that they are not in the right order. If you go  
 16:25:10 23 back --  
 16:25:10 24 MR. HEBERLING: Let's go off the  
 16:25:14 25 record. We have an exhibit problem.

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1625:16 1 THE VIDEOGRAPHER: We're going off  
 1625:16 2 the record at 4:24.  
 1626:28 3 (Discussion off the record.)  
 1626:28 4 THE VIDEOGRAPHER: Back on the record  
 1626:30 5 at 4:26.  
 1626:30 6 BY MR. HEBERLING:  
 1626:36 7 Q Okay. We've fixed the exhibit problem,  
 1626:38 8 and at page two of Exhibit 65, do you see where it  
 1626:40 9 says in Mr. Bleich's report on dust control,  
 1626:44 10 "However, in no instance has there actually been a  
 1626:48 11 surplus of fan capacity so that an increase of  
 1626:52 12 airflow throughout each individual system as a whole  
 1626:54 13 could be made"? Do you see that?  
 1626:54 14 A Yes.  
 1627:02 15 Q So was it your understanding that there  
 1627:06 16 was no excess fan capacity in the ventilating system  
 1627:08 17 in the dry mill?  
 1627:10 18 A Yes, sir. That's what this indicates.  
 1627:18 19 Q So if that is so, why wasn't more fan  
 1627:20 20 capacity added? Was that ever considered?  
 1627:22 21 Excuse me. That's two questions. Answer  
 1627:24 22 the first one.  
 1627:24 23 A I don't know.  
 1627:28 24 Q Do you remember discussions through the  
 1627:32 25 '60s and up until the time of the closing of the

1628:44 1 effectiveness by leaks in flexible connections,  
 1628:48 2 holes in elevator casings, open hand holes and  
 1628:50 3 chutes, et cetera." Do you see that?  
 1628:50 4 A Yes.  
 1628:54 5 Q Were some of those holes cut to free rocks  
 1628:56 6 that got stuck in the system?  
 1629:00 7 A Not to my knowledge, no, sir.  
 1629:04 8 Q What was an open hand hole?  
 1629:06 9 A I don't know.  
 1629:10 10 Q What was Mr. Bleich's background?  
 1629:12 11 A He was an engineer.  
 1629:12 12 Q Do you know what kind?  
 1629:16 13 A Mechanical, I believe.  
 1629:24 14 Q Was this problem of leaks and holes in the  
 1629:28 15 areas referenced in the sentence I just read -- Was  
 1629:42 16 that a continuing problem at the dry mill?  
 1629:44 17 A Yes.  
 1629:46 18 Q Was it ever completely solved?  
 1629:56 19 A No. It would be solved only by continuing  
 1629:58 20 maintenance of the equipment, which is what was  
 1629:58 21 done.  
 1630:04 22 Q I'm wondering why each of these reports  
 1630:08 23 seems to find leaks and holes.  
 1630:08 24 A I don't know.  
 1630:20 25 Q Okay. Then Item 1 on page two talks about

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1627:36 1 dry mill of possibly adding more fans or larger  
 1627:36 2 fans?  
 1627:40 3 A No, sir. I don't remember any such  
 1627:40 4 discussions.  
 1627:46 5 Q From '68 to '71, when you were general  
 1627:50 6 manager, you would likely have been in on any such  
 1627:52 7 discussion; correct?  
 1627:54 8 A Probably.  
 1627:58 9 Q And if money was going to be spent on a  
 1628:02 10 large fan in any other year, you would have been  
 1628:06 11 involved in a decision to spend that money; correct?  
 1628:08 12 A Yes, sir.  
 1628:10 13 MR. GRAHAM: Objection. Vague and  
 1628:12 14 ambiguous as to time and date.  
 1628:12 15 THE WITNESS: Yes, sir.  
 1628:14 16 BY MR. HEBERLING:  
 1628:16 17 Q And in the question I was referring to in  
 1628:20 18 any other year from 1964 to '74, when the dry mill  
 1628:22 19 was closed.  
 1628:22 20 A Yes.  
 1628:24 21 Q Did you understand that?  
 1628:24 22 A Yes.  
 1628:26 23 Q Okay. Then in the same paragraph two, it  
 1628:28 24 says, "Another factor contributing to the  
 1628:40 25 inefficiency of the system has been the loss of air

1630:32 1 the ground level discharge, and it says, "An  
 1630:38 2 excessive amount of dust and larger particles are  
 1630:40 3 being discharged from the fan outlet which adds to  
 1630:44 4 the air pollution within the general shop and  
 1630:46 5 service area." Do you see that?  
 1630:46 6 A Yes, sir.  
 1630:50 7 Q And this is that ground level discharge  
 1630:50 8 from the big 600 fan?  
 1630:52 9 A Yes.  
 1630:54 10 Q Do you recall any discussion with Grace  
 1631:02 11 executives over fixing this problem at this point  
 1631:02 12 when this memo was done?  
 1631:04 13 A No, sir.  
 1631:04 14 Q And on page three of the memo, Item 4, do  
 1631:08 15 you see a discussion of the buildup of dust on  
 1632:02 16 rafters and so forth?  
 1632:04 17 A Yes, sir.  
 1632:08 18 Q And then at the end it says, "A monthly  
 1632:14 19 'Sweepdown' interval is now effect." Do you see  
 1632:14 20 that?  
 1632:14 21 A Yes, sir.  
 1632:16 22 Q Do you know when that went into effect?  
 1632:18 23 A Well, it would have been prior to the  
 1632:20 24 writing of this letter, but I don't know exactly  
 1632:22 25 when it would have been.

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16:32:24 1 Q The same year, in '64?  
 16:32:24 2 A Probably, yes.  
 16:32:28 3 Q What was the sweepdown interval before  
 16:32:28 4 that?  
 16:32:30 5 A Well, they didn't -- When this was put  
 16:32:32 6 into effect, it was on a regular basis, and they  
 16:32:34 7 didn't have one on a regular basis prior to that.  
 16:32:40 8 Q Okay. And what is a sweepdown? Would you  
 16:32:42 9 describe what happened during a sweepdown?  
 16:32:46 10 A They would sweep the dust off of the top  
 16:32:50 11 of the rafters where it had settled.  
 16:32:52 12 Q And was there a sweep of the floors at the  
 16:32:52 13 same time?  
 16:32:56 14 A Yes, sir. The dust that was swept off of  
 16:32:58 15 the rafters would have to be cleaned up.  
 16:33:02 16 Q And was this done at a time when the mill  
 16:33:04 17 was closed?  
 16:33:06 18 A No. It would have been ongoing.  
 16:33:12 19 Q So it might be done while the mill was  
 16:33:12 20 running?  
 16:33:12 21 A That's possible, yes.  
 16:33:18 22 Q Was it sometimes done on a Sunday --  
 16:33:18 23 A Yes.  
 16:33:18 24 Q -- when the mill was not open?  
 16:33:20 25 A Yes. It could have been done on a

16:33:26 1 Q I'm now showing you Exhibit 192, which we  
 16:33:28 2 looked at before. Does that appear to be a memo  
 16:33:34 3 from you to Mr. Eschenbach dated November 18, 1980?  
 16:33:36 4 A Yes.  
 16:33:42 5 Q And were you the author of that memo?  
 16:33:42 6 A Yes.  
 16:33:50 7 Q Then do you see where it states, "We  
 16:33:52 8 started sampling with the impinger method in about  
 16:33:54 9 1965"?  
 16:33:54 10 A Yes.  
 16:33:58 11 Q Did you sample by any other method before  
 16:34:02 12 1965, or was that the first sampling that was done?  
 16:34:02 13 MR. GRAHAM: I'd object to the form  
 16:34:10 14 of the question in that the question -- the  
 16:34:14 15 predicate to the question is the statement you just  
 16:34:16 16 read, and it said "About 1965".  
 16:34:20 17 Go ahead and answer the question if you  
 16:34:20 18 can.  
 16:34:22 19 THE WITNESS: No. The impinger  
 16:34:26 20 method was the first method that we used, and if I  
 16:34:32 21 said that we started in 1965, that must have been an  
 16:34:34 22 error, because this letter, which is dated  
 16:34:38 23 December 30th, 1964, it said that that testing  
 16:34:46 24 program was in effect at that time.  
 16:34:46 25 ////

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16:33:22 1 Saturday or Sunday, when the mill was not running.  
 16:33:26 2 Q And you recall it happening on weekends at  
 16:33:26 3 times?  
 16:33:30 4 A Well, I don't recall, but we always had  
 16:33:34 5 maintenance crews on duty during periods when the  
 16:33:40 6 mill was not running, so it's a strong likelihood  
 16:33:40 7 that it would have been done then.  
 16:33:44 8 Q How long did this monthly sweepdown  
 16:33:48 9 interval continue after '64?  
 16:33:50 10 A I think forever probably.  
 16:33:54 11 Q Was it ever more frequent than that?  
 16:33:54 12 A I don't know. I don't recall.  
 16:34:12 13 Q Was there any reason why the sweepdown  
 16:34:12 14 couldn't have been done every Sunday when the mill  
 16:34:14 15 was closed?  
 16:34:14 16 A No.  
 16:34:24 17 Q Item 5 on page three talks about, "A dust  
 16:34:30 18 count apparatus identical (to) that used by the  
 16:34:32 19 State Board of Health is on hand." As of the end of  
 16:34:34 20 '64, had the company begun its own dust counts?  
 16:34:40 21 A Yes, sir.  
 16:34:46 22 Q Okay. I think you reported in a later  
 16:34:50 23 summary that the dust counts began in 1965. Is that  
 16:34:50 24 correct?  
 16:34:52 25 A I don't know. I don't recall.

16:34:46 1 BY MR. HEBERLING:  
 16:34:48 2 Q So you could have started a few months  
 16:34:50 3 before the beginning of '65?  
 16:34:50 4 A Yes, sir.  
 16:34:56 5 Q And on page four, paragraph one, under  
 16:34:58 6 "Hauling" -- No. Under -- Right at the top it  
 16:35:02 7 says, "The skipping operation is not a dust-free  
 16:35:04 8 operation, but (it) is not a hazardous operation."  
 16:35:06 9 Do you see that?  
 16:35:10 10 A Yes.  
 16:35:22 11 Q Is it fair to say if there was dust  
 16:35:24 12 present then there was asbestos in the dust?  
 16:35:28 13 A Yes.  
 16:35:30 14 Q As we sit here now, do you see any problem  
 16:35:32 15 with Mr. Bleich's statement in 1964 that the skip  
 16:35:34 16 operation was not a hazardous operation?  
 16:35:36 17 A No, I don't see any problem.  
 16:35:44 18 Q Now, under "Hauling" -- let's see -- it  
 16:35:48 19 says, "The dumping the skip cars into the lower ore  
 16:35:52 20 bins creates dust, as does any handling of  
 16:35:54 21 vermiculite concentrates." Do you see that?  
 16:35:58 22 A Yes, sir.  
 16:36:02 23 Q Did you agree with that in 1964?  
 16:36:04 24 A Yes, sir.  
 16:36:10 25 Q Do you agree with that now?

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16:38:10 1 A Yes, sir.  
 16:38:22 2 Q So can we infer from that that any  
 16:38:22 3 handling of vermiculite concentrates will create  
 16:38:26 4 dust, any movement of them?  
 16:38:28 5 MR. MURPHY: Objection to the form of  
 16:38:28 6 the question.  
 16:38:32 7 THE WITNESS: It would be correct to  
 16:38:34 8 say it could create dust.  
 16:38:34 9 BY MR. HEBERLING:  
 16:38:36 10 Q All right. It's also possible that it  
 16:38:42 11 would be a rainy day and it could be raining so much  
 16:38:42 12 there wouldn't be any dust; right?  
 16:38:44 13 MR. MURPHY: Objection.  
 16:38:44 14 Argumentative.  
 16:38:46 15 THE WITNESS: In the operation I  
 16:38:48 16 don't know how that could happen. The concentrates  
 16:38:52 17 wouldn't be that wet, I don't think, but there could  
 16:38:56 18 be conditions where, if they were wet from rain or  
 16:39:06 19 whatever, then there would be no free dust in the  
 16:39:06 20 vicinity.  
 16:39:06 21 BY MR. HEBERLING:  
 16:39:18 22 Q Okay. And vermiculite concentrates are  
 16:39:20 23 what is -- what emerge from the dry mill; correct?  
 16:39:20 24 A Yes, sir.  
 16:39:20 25 Q And then it's handled, goes down the

16:40:34 1 enters that space for repairs or whatever reason  
 16:40:38 2 would be standing in asbestos dust?  
 16:40:40 3 MR. MURPHY: Objection. Lack of  
 16:40:44 4 foundation. Hypothetical.  
 16:40:46 5 THE WITNESS: I don't know what that  
 16:40:48 6 question means. I don't know what you mean. When  
 16:40:50 7 that truck is being loaded, there is dust created,  
 16:40:54 8 but that's only for a very short period of time, and  
 16:40:56 9 there's no person there that's exposed to that dust  
 16:41:00 10 at that time. He opens the gates, and he gets out  
 16:41:02 11 of the way.  
 16:41:02 12 BY MR. HEBERLING:  
 16:41:04 13 Q Then, as a matter of common sense, does  
 16:41:06 14 the dust settle on the ground?  
 16:41:08 15 A I suppose it would, yes.  
 16:41:12 16 Q And would any worker who later came to the  
 16:41:14 17 area and stood at that same spot be standing in  
 16:41:16 18 asbestos dust?  
 16:41:20 19 MR. MURPHY: Objection to the form of  
 16:41:20 20 the question.  
 16:41:20 21 BY MR. HEBERLING:  
 16:41:20 22 Q Is that likely?  
 16:41:22 23 A That's possible, yes.  
 16:41:32 24 Q Okay. Then in the second paragraph, still  
 16:41:36 25 talking about the loading of the Kenworth truck, it

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16:39:20 1 mountain on the skip; correct?  
 16:39:20 2 A Yes.  
 16:39:22 3 Q And then trucked to the river storage;  
 16:39:22 4 correct?  
 16:39:22 5 A Yes.  
 16:39:26 6 Q And then goes on the conveyors across the  
 16:39:28 7 river; correct?  
 16:39:28 8 A Yes.  
 16:39:30 9 Q So every time it was moved is it fair to  
 16:39:34 10 say that dust would be created in most instances?  
 16:39:34 11 A Yes, sir.  
 16:39:46 12 Q Okay. But as I understand your position,  
 16:39:52 13 you're saying the raw ore when moved or dumped from  
 16:39:56 14 a truck at the transfer point would be -- in most  
 16:40:00 15 cases would not create dust; is that correct?  
 16:40:00 16 A That's correct, yes, sir.  
 16:40:14 17 Q Then paragraph two, there's talk of,  
 16:40:18 18 "Loading of the Kenworth truck beneath the lower  
 16:40:22 19 ore bins is a dusty operation in a somewhat confined  
 16:40:24 20 space." Do you see that?  
 16:40:24 21 A Yes.  
 16:40:26 22 Q And is it likely that there would be  
 16:40:26 23 asbestos in this dust?  
 16:40:28 24 A Yes.  
 16:40:32 25 Q And is it likely, then, that anyone who

16:41:42 1 says, "The ventilation problem is immense." Would  
 16:41:42 2 you agree with that?  
 16:41:44 3 A Yes.  
 16:41:52 4 Q Was the problem of dust at the lower ore  
 16:42:00 5 bins ever solved? The ventilation -- Was the  
 16:42:04 6 ventilation problem at the lower ore bins ever  
 16:42:04 7 solved?  
 16:42:06 8 A No.  
 16:42:14 9 Q Paragraph four, still under "Hauling," do  
 16:42:16 10 you see where it says, "The dumping of the Kenworth  
 16:42:20 11 truck into either the river loading hoppers or the  
 16:42:24 12 horizontal storage creates dust in considerable  
 16:42:26 13 quantities"? Do you see that?  
 16:42:26 14 A Yes, sir.  
 16:42:30 15 Q Now, the horizontal storage, is that a  
 16:42:32 16 building that's closed on three sides, more or less?  
 16:42:34 17 A More or less, yes.  
 16:42:38 18 Q And is that where a nursery is currently  
 16:42:38 19 in operation?  
 16:42:38 20 A Yes, sir.  
 16:42:42 21 Q And the storage building that is there,  
 16:42:46 22 does that currently contain boats?  
 16:42:48 23 A I don't know what it contains.  
 16:42:50 24 Q At any rate, is it your understanding that  
 16:43:04 25 the building is still there?

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16-03-04 1 A Yes, sir. I know it's still there.  
 16-03-06 2 Q And when the operation -- When the mine  
 16-03-06 3 and mill were still operating, would anyone who  
 16-03-10 4 would be standing in the area, say within 30 feet of  
 16-03-14 5 that building, be standing -- Is it likely that they  
 16-03-16 6 would be standing in asbestos dust?  
 16-03-18 7 MR. MURPHY: Objection to the form of  
 16-03-22 8 the question, the reference to "Asbestos dust,"  
 16-03-26 9 which was the basis of my objection the last time.  
 16-03-28 10 THE WITNESS: It's possible they  
 16-03-32 11 could be standing in dirt or in dust with asbestos  
 16-03-36 12 in it, but there would not be piles of dust laying  
 16-03-40 13 around in these areas.  
 16-03-40 14 BY MR. HEBERLING:  
 16-03-42 15 Q Is that because the dust would be cleaned  
 16-03-46 16 up, or why would that be?  
 16-03-50 17 A No. There would not be that much dust  
 16-03-52 18 generated and settled.  
 16-03-54 19 Q And at the horizontal storage, how --  
 16-04-00 20 Okay. A truck dumped the ore -- let's say the  
 16-04-02 21 vermiculite concentrate --  
 16-04-02 22 A Yes.  
 16-04-04 23 Q -- at the horizontal storage?  
 16-04-04 24 A Yes.  
 16-04-08 25 Q And then how did the concentrate get into

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16-04-08 1 the conveyors?  
 16-04-14 2 A The conveyors were on the floor underneath  
 16-04-18 3 this concentrate, and there were gates on these  
 16-04-20 4 conveyors that would be opened, and they were opened  
 16-04-24 5 from a remote location so the ore would fall down  
 16-04-26 6 through them onto a conveyor belt.  
 16-04-28 7 Q And the place where the conveyors were,  
 16-04-30 8 was that called the tunnels?  
 16-04-32 9 A Yes, sir.  
 16-04-36 10 Q And at times did a dozer operator push the  
 16-04-44 11 concentrate into the area of the tunnels?  
 16-04-44 12 A Yes, sir.  
 16-04-48 13 Q And at times did workers shovel  
 16-04-54 14 concentrate which fell off the conveyor back onto  
 16-04-54 15 the conveyor?  
 16-04-56 16 A Yes, sir.  
 16-05-04 17 Q And what kind of ventilation did the  
 16-05-08 18 tunnels have in the '60s, just natural?  
 16-05-14 19 A No. They had -- They had fans that sucked  
 16-05-20 20 air out of the tunnels and exhausted it.  
 16-05-22 21 Q Do you know how big the fan or fans were?  
 16-05-22 22 A No, sir.  
 16-05-30 23 Q And, then, later, in the '70s, was a  
 16-05-34 24 different ventilation system applied there?  
 16-05-38 25 A Well, the ventilation system always --

16-05-38 1 improvement of the ventilation system in the tunnels  
 16-07-02 2 in 1975 or 1976?  
 16-07-06 3 A No. I know that it was improved. I don't  
 16-07-10 4 know what -- I don't know when in time it would have  
 16-07-10 5 been done.  
 16-07-18 6 Q Okay. Back to the December 30, 1964 memo,  
 16-07-22 7 and under "Storage," it says, "The unloading of the  
 16-07-26 8 horizontal storage bins requires the use of the  
 16-07-30 9 Cat 955 loader-dozer. This is a dusty operation."  
 16-07-32 10 Is this what you described before?  
 16-07-32 11 A Yes, sir.  
 16-07-34 12 Q Where the dozer pushes the concentrate  
 16-07-38 13 onto the conveyor belts?  
 16-07-38 14 A Yes.  
 16-07-54 15 Q And what are the load-out gates?  
 16-07-58 16 A Well, they are the gates that are in the  
 16-08-04 17 tunnels that the concentrate falls through when it  
 16-08-06 18 falls onto the conveyor belt.  
 16-08-12 19 Q Okay. So that would be a gate in the  
 16-08-14 20 ceiling of the tunnels which would be opened to  
 16-08-16 21 allow the concentrate to fall in?  
 16-08-16 22 A Yes, sir.  
 16-08-34 23 Q Then in the last paragraph of page four,  
 16-08-38 24 there's mention of silo-type storage bins built  
 16-08-46 25 during the period of March '59 to December '61.

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16:48:46 1 What were those?

16:48:50 2 A A silo-type bin.

16:48:54 3 Q How did the ore get up into the silos?

16:48:56 4 A By an elevator and a conveyor belt across

16:48:58 5 the top of the silos.

16:49:04 6 Q How did the operators select which ore to

16:49:06 7 put into the horizontal storage and which ore to put

16:49:08 8 into the silos?

16:49:12 9 A The fine ore, No. 4, was put into the

16:49:16 10 silos, and two, three and four were put into the

16:49:18 11 horizontal storage.

16:49:26 12 Q Okay. Then at the top of page five, still

16:49:40 13 on the silos, it says, "Although there is no

16:49:42 14 ventilation system on the screw and belt conveyor

16:49:46 15 galleys across the top of the bins, there is no

16:49:48 16 personnel exposure because bin changes ... are made

16:49:54 17 during down time." As we sit here today, do you

16:49:56 18 agree with that statement?

16:49:56 19 A Yes, sir.

16:50:00 20 Q If any personnel were in there repairing,

16:50:06 21 performing repairs or making this bin change,

16:50:10 22 wouldn't they be standing in asbestos -- asbestos

16:50:12 23 dust as they worked?

16:50:14 24 MR. MURPHY: Objection to the form of

16:50:14 25 the question.

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16:50:14 1 THE WITNESS: I don't know.

16:50:16 2 Possibly.

16:50:18 3 BY MR. HEBERLING:

16:50:24 4 Q Okay. Then under "Loading," it's

16:50:26 5 mentioned at the end, the last little paragraph,

16:50:30 6 "The downtown storage and loading facilities are

16:50:34 7 comparable to the river storage and loading. All

16:50:38 8 truck dumping is into open hoppers which reduces the

16:50:42 9 hazard. Except for truck loading, all loading is

16:50:46 10 bagged. The bagging equipment is ventilated." Do

16:50:46 11 you see that?

16:50:46 12 A Yes, sir.

16:50:56 13 Q And so here the workers would be moving

16:51:00 14 the concentrate, and there would be some dust

16:51:02 15 involved, wouldn't there?

16:51:02 16 A Yes, sir.

16:51:06 17 Q And that would mean some asbestos

16:51:08 18 exposure, would it not?

16:51:08 19 A Yes, sir.

16:51:10 20 Q Now, there are no controls suggested for

16:51:14 21 these facilities by the railroad tracks by the edge

16:51:20 22 of town, at least by Mr. Bleich; is that correct?

16:51:20 23 A Yes.

16:51:22 24 MR. GRAHAM: I'd object to the form

16:51:24 25 of the question on the basis of the description of

Libby

16:51:26 1 the location, but it's already been answered.

16:51:26 2 BY MR. HEBERLING:

16:51:28 3 Q How was the bagging equipment ventilated

16:51:40 4 in 1964?

16:51:52 5 A There was a ventilating fan at the bagging

16:51:58 6 facility, and it discharged -- went into a bag

16:52:00 7 house.

16:52:08 8 Q And then under "Expanding Plant," it says,

16:52:16 9 "The expanding plant, including the special verxite

16:52:20 10 equipment". What is verxite equipment?

16:52:24 11 A It's a form of highly concentrated

16:52:24 12 expanded material that they made.

16:52:30 13 Q So would that be a very fine dust?

16:52:34 14 A No, it's not a dust at all. It was a --

16:52:38 15 It was a product that was made from, basically,

16:52:50 16 No. 4 ore, which was highly concentrated and

16:52:50 17 treated.

16:52:56 18 Q Okay. So it goes on, "The expanding

16:53:00 19 plant ... is no better or no worse than any normal

16:53:04 20 commercial plant. Complete dust control will be

16:53:06 21 designed into any new installation." Do you see

16:53:06 22 that?

16:53:06 23 A Yes, sir.

16:53:08 24 Q Was there ever a new installation?

16:53:10 25 A Not at Libby, no, sir.

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16:53:14 1 Q And the expanding plant continued to

16:53:16 2 operate until what year?

16:53:24 3 A About 1969, but the operation of that

16:53:28 4 should be defined. It operated very little. The

16:53:32 5 primary purpose of that expanding plant was for

16:53:40 6 research into more efficient means of expanding the

16:53:44 7 ore, exfoliating the ore. It was not operated as a

16:53:46 8 commercial plant.

16:53:48 9 Q Then under "Laboratory," it says, "The

16:53:52 10 regular mill testers do not wear respirators in the

16:53:54 11 laboratory." Do you see that?

16:53:54 12 A Yes, sir.

16:53:58 13 Q And the laboratory was not in the dry

16:53:58 14 mill; right?

16:54:00 15 A No.

16:54:00 16 Q It was a separate building?

16:54:00 17 A Yes, sir.

16:54:04 18 Q Okay. Is it fair to say that most people

16:54:06 19 in the 1960s who worked outside the dry mill did not

16:54:08 20 wear respirators?

16:54:10 21 A Yes, sir.

16:54:14 22 Q Was that true in the '70s as well?

16:54:14 23 A Yes, sir.

16:54:26 24 Q Was this extensive review by Mr. Bleich

16:54:30 25 dated December 30, 1964 -- Is this the most detailed

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Libby 16:54:38 1 evaluation of dust control at the Grace mine and  
16:54:40 2 mill that you saw while working there?  
16:54:42 3 MR. GRAHAM: Object to the form of  
16:54:42 4 the question.

16:54:44 5 Go ahead.

16:54:44 6 THE WITNESS: I believe so, yes.

16:54:46 7 BY MR. HEBERLING:

16:54:50 8 Q Did you ever see a similar step-by-step  
16:54:54 9 review done by Mr. Kostic or anyone else?

16:54:56 10 A I don't recall, no, sir.

16:55:14 11 Q Beyond the use of respirators and repairs  
16:55:18 12 in the dry mill, was anything done in 1965 as a  
16:55:20 13 result of this report?

16:55:20 14 A I don't recall.

16:55:28 15 Q Let's refer to Exhibit 66. Does this  
16:55:28 16 appear to be --

16:55:30 17 MR. MURPHY: Could I just, before you  
16:55:32 18 go to the next exhibit, inquire of the witness?

16:55:34 19 Are you okay? You look like you're  
16:55:40 20 getting a little tired, and it's five o'clock, and  
16:55:42 21 we'll go to five-thirty if you're up to it as  
16:55:46 22 agreed, or if you're tired, we'll certainly break.  
16:55:50 23 You strike me as you're winding down a little bit,  
16:55:52 24 but you tell me. I just wanted to give you the  
16:55:58 25 opportunity to say -- How are you doing?

Libby 16:58:30 1 A That's right.

16:58:32 2 Q Then the second paragraph, "In going over  
16:58:34 3 these reports, I can only say that it presents a

16:58:38 4 very sorry record." There is still some

16:58:42 5 improvement -- Excuse me. "There is some

16:58:46 6 improvement indicated during 1964, but still totally

16:58:48 7 inadequate." Do you see that?

16:58:48 8 A Yes, sir.

16:58:50 9 Q Did you agree with that statement when it  
16:58:50 10 was made?

16:58:52 11 A Well, I don't recall. This was

16:58:58 12 Mr. Bleich's statement. I don't have any comment on  
16:58:58 13 it.

16:59:00 14 Q Do you agree with it now?

16:59:08 15 A Well, I don't know that I do, no. I think  
16:59:10 16 that we did the best that we could.

16:59:18 17 Q Let's refer to Exhibit 67, and does that  
16:59:22 18 appear to be a memo from you to Mr. Kelley dated  
16:59:22 19 January 2, 1965?

16:59:24 20 A Yes, sir.

16:59:26 21 Q Are you the author of this memo?

16:59:26 22 A Yes, sir.

16:59:30 23 Q And was this memo written pursuant to a

16:59:36 24 direction from Mr. Blackwood, who's high up in

16:59:40 25 Grace, to present an evaluation of dust control and

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Libby 16:55:58 1 THE VIDEOGRAPHER: This may be a good  
16:56:00 2 time to go off the record. We're about out of  
16:56:00 3 tape.

16:56:02 4 MR. MURPHY: If I knew that, I would  
16:56:04 5 have waited.

16:56:06 6 THE VIDEOGRAPHER: We're going off  
16:56:08 7 the record at 4:55.

16:57:44 8 (Brief recess.)

16:57:48 9 THE VIDEOGRAPHER: We're back on the  
16:57:50 10 record. It's approximately 4:57.

16:57:50 11 BY MR. HEBERLING:

16:57:54 12 Q Let's refer to Exhibit 66. Does this  
16:57:56 13 appear to be a memo from Mr. Bleich to Mr. Kelley  
16:57:58 14 dated January 2, 1965?

16:58:00 15 A Yes, sir.

16:58:06 16 Q And was this a memo generated by Zonolite  
16:58:08 17 in Libby at or about this date?

16:58:12 18 A It was apparently generated by Mr. Bleich,  
16:58:12 19 yes, sir.

16:58:20 20 Q Then it starts off, "Earl has sent two  
16:58:22 21 copies of all reports we have from Montana State  
16:58:26 22 Board of Health on the dust problem." Do you see  
16:58:26 23 that?

16:58:28 24 A Yes, sir.

16:58:30 25 Q And you are Earl; is that right?

Libby 16:59:42 1 the history of it?

16:59:42 2 A Yes, sir.

16:59:46 3 Q Then page two, in the middle of the first  
17:00:00 4 paragraph, it says, "In order to protect ourselves

17:00:02 5 and place ourselves on record as ... the condition

17:00:06 6 of our employees, as of the effective date of the

17:00:08 7 law," referring to the occupational disease law, "we

17:00:12 8 instituted a program whereby all of our employees

17:00:16 9 would have x-rays at the local hospital." Do you

17:00:16 10 see that?

17:00:16 11 A Yes.

17:00:18 12 Q Is that a correct statement of what  
17:00:22 13 happened?

17:00:22 14 A Yes, sir.

17:01:12 15 Q Then on page three at the bottom, it says,

17:01:16 16 "Upon completion of the x-rays and interpretations

17:01:18 17 by Dr. Little, the reports were again turned over to

17:01:22 18 the employees' personal doctors for notification of

17:01:26 19 results as before. In this survey there were 143

17:01:32 20 x-rays taken, which included 21 salaried supervisory

17:01:38 21 people. Of the 143, 92 have had more than five

17:01:40 22 years' employment with us. Of these, 30 show some

17:01:44 23 emphysema or fibrotic respiratory condition." Do

17:01:44 24 you see that?

17:01:46 25 A Yes, sir.

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17:01:48 1 Q Who did this analysis of all the x-rays?  
 17:01:50 2 A Dr. William Little.  
 3 Q And did he --  
 17:01:54 4 A I should qualify that. In 1965 I believe  
 17:01:58 5 he did them all. He later on took over one or two  
 17:02:00 6 associates that may have interpreted them, but they  
 17:02:04 7 were in Dr. Little's office.  
 17:02:06 8 Q What I'm wondering is, who did the  
 17:02:10 9 statistical review? Was this done by you or  
 17:02:14 10 somebody at Zonolite, based on the reports, or did  
 17:02:18 11 Dr. Little do the statistical work?  
 17:02:20 12 A Now, what statistical work?  
 17:02:22 13 Q Well, for example, saying, for the 92  
 17:02:26 14 employees with more than five years' employment, "Of  
 17:02:30 15 these, 30 show some emphysema or fibrotic  
 17:02:32 16 respiratory condition."  
 17:02:36 17 A I probably did that, based on Dr. Little's  
 17:02:38 18 interpretations.  
 17:02:38 19 Q So you had all the reports?  
 17:02:38 20 A Yes, sir.  
 17:02:42 21 Q And you just used the conclusions in the  
 17:02:44 22 reports?  
 17:02:44 23 A Yes, sir.  
 17:02:54 24 Q Okay. Then further down it says, "39 have  
 17:02:58 25 over ten years' employment with us. Of this 39, the

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17:03:00 1 radiologist interprets 21 of them to have normal  
 17:03:04 2 chests and 18 to have abnormal chests." Do you see  
 17:03:04 3 that?  
 17:03:04 4 A Yes, sir.  
 17:03:08 5 Q And, again, you did this statistical  
 17:03:08 6 review?  
 17:03:10 7 A Yes, sir.  
 17:03:18 8 Q Then the next page do you see a listing of  
 17:03:20 9 normal chests and abnormal chests?  
 17:03:20 10 A Yes, sir.  
 17:03:32 11 Q Of the abnormal chests, do you see Allen  
 17:03:32 12 Boothman?  
 17:03:34 13 A Yes.  
 17:03:36 14 Q Did he die of lung disease?  
 17:03:42 15 A I don't recall what he died from. He  
 17:03:44 16 died. I know that, but I don't recall what his  
 17:03:44 17 cause of death was.  
 17:03:46 18 Q The next one, Robert Cohenour, did he die  
 17:03:46 19 of lung disease?  
 17:03:48 20 A Yes, sir.  
 17:03:50 21 Q Floyd Cole, did he die of lung disease?  
 17:03:56 22 A I believe not, but I'm not really -- I  
 17:04:20 23 don't really know what he died from. It was after I  
 17:04:20 24 left the employ of the company.  
 17:04:22 25 Q Did you testify in a deposition in his

17:04:22 1 case against Grace?  
 17:04:22 2 A I don't know.  
 17:04:22 3 Q Okay. We've referred to a deposition --  
 17:04:24 4 I'm not going to dig that out right now.  
 17:04:24 5 Jack Garrison, did he die of lung disease?  
 17:04:30 6 A Yes, sir.  
 17:04:30 7 Q Ernie Hamilton, did he die of lung  
 17:04:32 8 disease?  
 17:04:36 9 A Yes, sir, I believe so.  
 17:04:38 10 Q Louis Hoppe, did he die of lung disease?  
 17:04:46 11 A No. He drowned.  
 17:04:48 12 Q And Michael McNair, did he die of  
 17:04:52 13 mesothelioma?  
 17:04:52 14 A Yes, sir.  
 17:04:52 15 Q Which is a lung disease?  
 17:04:54 16 A Yes, sir.  
 17:04:54 17 MR. MURPHY: Objection to the form of  
 17:04:54 18 the last question.  
 17:04:54 19 BY MR. HEBERLING:  
 17:04:56 20 Q Lloyd Miller, did he die of lung disease?  
 17:05:00 21 A Yes, sir.  
 17:05:02 22 Q Richard Rayome, did he die of lung  
 17:05:02 23 disease?  
 17:05:06 24 A Yes, sir.  
 17:05:06 25 Q Stuart Risley, did he die of lung disease?

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17:05:52 1 disease?

17:05:56 2 A I don't know.

17:05:58 3 Q Arnold Smith, did he die of lung disease?

17:06:04 4 A I can't say.

17:06:04 5 Q James Smith, did he die of lung disease?

17:06:10 6 A No, sir.

17:06:10 7 Q And Edward Wittlake, did he die of lung

17:06:10 8 disease?

17:06:16 9 A I don't know. On all of these cases where

17:06:16 10 I said, "I don't know. I don't recall," I probably

17:06:16 11 knew at one time.

17:06:18 12 Q And were all these employees whose names I

17:06:18 13 just read exposed to asbestos dust?

17:06:20 14 A Yes, sir, they would have been.

17:06:22 15 Q And at any point -- No. At this point, in

17:06:26 16 1965, was any information given to these employees

17:06:30 17 that inhaling asbestos dust could be dangerous and

17:06:32 18 hazardous to their health?

17:06:40 19 A Well, you have asked this question before

17:06:46 20 today, and, specifically, I don't know that we gave

17:06:56 21 any specific information on the hazards of asbestos

17:06:58 22 or whatever, but there's every reason to think that

17:07:04 23 these employees were aware of it. Among other

17:07:08 24 things, the union, which they all belonged to, had

17:07:16 25 information on the hazards of asbestos to their

17:06:28 1 to?

17:06:34 2 A Well, some of the references are to

17:06:40 3 inspections by the State Board of Health, which

17:06:44 4 addressed the dust problems, but other than that, I

17:06:48 5 can't say specifically what it would be.

17:06:52 6 Q Okay. As of 1965, did W.R. Grace have a

17:06:54 7 policy of keeping asbestos dust away from its

17:06:56 8 employees?

17:06:56 9 MR. MURPHY: Objection to the form of

17:06:58 10 the question.

17:06:58 11 THE WITNESS: Well, it's not possible

17:06:58 12 to have a policy to do that. We did everything we

17:06:58 13 could to keep the dust exposure to all of the

17:06:58 14 employees that we had at the minimal that we could.

17:06:58 15 BY MR. HEBERLING:

17:06:58 16 Q Okay. And then at page six do you see a

17:06:58 17 list of enclosures?

17:06:58 18 A Yes, sir.

17:06:58 19 Q And No. 1, do you see "Dr. Woodrow

17:06:58 20 Nelson - Report of Spirometry Tests, 1964"?

17:06:58 21 A Yes, sir.

17:06:58 22 Q Go back to Exhibit 54. Is this Exhibit 54

17:06:58 23 titled "Report of Spirometry Tests"?

17:06:58 24 A Yes, sir. I'd have every reason to

17:06:58 25 believe that the enclosure of Dr. Nelson's listed

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17:07:18 1 welfare, and --

17:07:20 2 Q Do you have any personal knowledge of any

17:07:22 3 discussion at a union meeting --

17:07:26 4 MR. MURPHY: Excuse me,

17:07:28 5 Mr. Heberling. I don't think the witness had

17:07:30 6 finished his answer. I believe you interrupted

17:07:34 7 him. If he's finished, fine, but I don't believe he

17:07:36 8 was finished.

17:07:36 9 BY MR. HEBERLING:

17:07:38 10 Q If you have more, please go ahead.

17:07:40 11 A No. I'll stop there.

17:07:42 12 Q Okay. Do you have any personal knowledge

17:07:46 13 of a union meeting where asbestos hazards were

17:07:52 14 discussed as of the 1960s?

17:07:52 15 A Well, I certainly was never in any

17:07:54 16 attendance at any union meetings except --

17:07:58 17 Q Except by -- Excuse me.

17:08:00 18 A -- one that I presented some information.

17:08:04 19 It had nothing to do with this, but I have seen

17:08:10 20 copies of union meeting minutes where the asbestos

17:08:12 21 problem was discussed in the union meetings.

17:08:14 22 Q Do you know the dates of those minutes?

17:08:16 23 A No, sir.

17:08:20 24 Q And do you know if those minutes refer to

17:08:22 25 the dust problem or exactly what the reference is

17:10:28 1 here is this report.

17:10:32 2 Q "This report," and you're pointing at

17:10:34 3 Exhibit 54?

17:10:34 4 A Yes, sir.

17:10:46 5 Q Okay. Then let's refer to Exhibit 68.

17:10:54 6 Does this appear to be a letter of Mr. Rupp,

17:11:00 7 treasurer, to the insurance company, Maryland

17:11:02 8 Casualty, dated January 6, '65?

17:11:04 9 A Yes, sir.

17:11:06 10 Q And down under "bc," for blind copy, do

17:11:10 11 you see "E.D. Lovick"?

17:11:10 12 A Yes, sir.

17:11:14 13 Q Did you receive a copy of this Exhibit 68

17:11:16 14 in 1965, January?

17:11:18 15 A Yes, sir.

17:11:26 16 Q Now we're back to talking about

17:11:40 17 Dr. Nelson's proposal for further study, and do you

17:11:42 18 understand from this letter that there was the

17:11:44 19 reference to the insurance company to undertake the

17:11:46 20 study?

17:11:48 21 A Yes, sir.

17:11:54 22 Q And the last sentences of the letter

17:12:00 23 appear to read, "Mr. Kelley then met with

17:12:02 24 Dr. Woodrow (Wilson) in Libby." Do you recall

17:12:06 25 meeting with Mr. Kelley and Mr. Wilson in Libby?

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17:12:04 1 MR. GRAHAM: I probably should  
 17:12:12 2 correct that. "Woodrow Wilson" is a Freudian slip.  
 17:12:20 3 It probably should be Woodrow Nelson.  
 17:12:20 4 MR. HEBERLING: I don't know where  
 17:12:20 5 I've heard that name.  
 17:12:22 6 MR. MURPHY: Maybe I should have  
 17:12:24 7 asked Mr. Heberling if we should have quit at  
 17:12:26 8 five o'clock instead of Mr. Lovick.  
 9 BY MR. HEBERLING:  
 17:12:28 10 Q Okay. It says, "Mr. Kelley then met with  
 17:12:30 11 Mr. Woodrow Nelson in Libby." Do you recall a  
 17:12:34 12 meeting between you and Mr. Kelley and Mr. Nelson?  
 17:12:36 13 A No, sir, I don't.  
 17:12:36 14 Q "And arranged for the forwarding of the  
 17:12:40 15 desired records. Mr. E. Lovick, assistant manager  
 17:12:44 16 of the Libby operation, today was handling the  
 17:12:48 17 (packaging) and shipping of the records." Did you  
 17:12:48 18 do that?  
 17:12:48 19 A Yes, sir.  
 17:12:56 20 Q And in doing so did you ship off the  
 17:13:00 21 results of Dr. Nelson's spirometry tests to the  
 17:13:04 22 Maryland Casualty Company?  
 17:13:10 23 A I'm not sure about this particular time  
 17:13:22 24 what they wanted, but because the spirometry thing  
 17:13:26 25 was referred to here --

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17:13:28 1 Q I think we can answer this with the next  
 17:13:28 2 letter.  
 17:13:30 3 A Okay.  
 17:13:32 4 MR. MURPHY: I think you could go  
 17:13:34 5 back to --  
 17:13:34 6 BY MR. HEBERLING:  
 17:13:36 7 Q Exhibit 69 --  
 17:13:36 8 A Yes.  
 17:13:40 9 Q -- does this appear to be a letter from  
 17:13:42 10 you to the insurance company dated January 6, '65?  
 17:13:42 11 A Yes.  
 17:13:46 12 Q And are you the author of this letter?  
 17:13:46 13 A Yes, I am.  
 17:13:50 14 Q And do you list what you sent off to the  
 17:13:50 15 insurance company?  
 17:13:54 16 A Yes, sir.  
 17:13:58 17 Q And was that a fairly complete set of what  
 17:14:00 18 Dr. Nelson had?  
 17:14:04 19 A That was everything that -- everything  
 17:14:04 20 that he had, I'm sure.  
 17:14:12 21 Q Then let's refer to Exhibit 70, and does  
 17:14:16 22 that appear to be a letter or a memo from Mr. Kelley  
 17:14:18 23 to Bleich and Lovick?  
 17:14:18 24 A Yes, sir.  
 17:14:22 25 Q Did you receive this on or about

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17:14:24 1 January 8, '65?  
 17:14:26 2 A Yes, sir.  
 17:14:26 3 Q And in the second paragraph, do you see  
 17:14:30 4 where it says, "I am very disappointed in the  
 17:14:32 5 slowness to react to the recommendations of the  
 17:14:34 6 Montana State Department of Health, and you are  
 17:14:38 7 hereby required and directed to bring the  
 17:14:40 8 recommendations into effect immediately"? Do you  
 9 see that?  
 17:14:42 10 A Yes, sir, I see that.  
 17:14:44 11 Q Did you interpret that as a reprimand from  
 17:14:46 12 Mr. Kelley?  
 17:14:46 13 A Yes, sir.  
 17:15:04 14 Q Then I believe -- In fairness, was there  
 17:15:06 15 any doubt that Mr. Kelley was aware of the problem  
 17:15:12 16 from 1956 on?  
 17:15:14 17 MR. GRAHAM: Object to the form of  
 17:15:16 18 the question. I don't understand it.  
 17:15:18 19 Go ahead and answer it if you can  
 17:15:18 20 understand it.  
 17:15:20 21 THE WITNESS: I don't either. I  
 17:15:22 22 don't understand it either. You say "That  
 17:15:24 23 Mr. Kelley was aware of the problem." I don't know  
 17:15:26 24 which problem you're talking about.  
 17:15:26 25 /////

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17:15:28 1 BY MR. HEBERLING:  
 17:15:30 2 Q The problem of slowness to react or what  
 17:15:30 3 was being done in response to the recommendations of  
 17:15:32 4 the State Health Department.  
 17:15:40 5 A Well, this was his feeling that this was a  
 17:15:46 6 problem. I don't know that I agreed or disagreed at  
 17:15:50 7 that time, but that was his reaction.  
 17:15:54 8 Q And then it says, "Not later than  
 17:15:58 9 April 15 I expect you to request a resurvey by the  
 17:16:00 10 Montana State Department of Health"?  
 17:16:00 11 A Yes.  
 17:16:02 12 Q That's toward the bottom. Do you see  
 17:16:02 13 that?  
 17:16:02 14 A Yes.  
 17:16:04 15 Q Was that done?  
 17:16:04 16 A I don't recall.  
 17:16:10 17 Q Was there an inspection by the Montana  
 17:16:14 18 State Board of Health in 1965, to your knowledge?  
 17:16:20 19 A I don't recall. If there was, there would  
 17:16:22 20 be a report on it.  
 17:16:28 21 Q Now, one of the recommendations had been  
 17:16:34 22 to have this ground level exhaust from the 600 fan  
 17:16:40 23 raised up and, instead of having a horizontal stack,  
 17:16:42 24 have a vertical stack?  
 17:16:42 25 A Yes.

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7:16:41 1 Q And since you were to bring the  
 7:16:50 2 recommendations into effect immediately and that was  
 7:16:54 3 one of the recommendations, why wasn't that yet done  
 7:16:54 4 for three more years?  
 7:16:56 5 A I don't know.  
 7:17:00 6 Q And they had recommended a vacuum system.  
 7:17:02 7 Do you recall that in the 1956 report?  
 7:17:04 8 A Yes.  
 7:17:10 9 Q And was that bought at this time, in '65?  
 7:17:12 10 A I don't recall.  
 7:17:16 11 Q And do you recall a recommendation to  
 7:17:18 12 clean the floors and rafters so that dust from the  
 7:17:22 13 floors and rafters was not a factor?  
 7:17:22 14 A Yes, sir. I recall that.  
 7:17:28 15 Q And yet the monthly sweepdown was  
 7:17:28 16 continued, was it not?  
 7:17:30 17 A Well, that was part of the program.  
 7:17:40 18 Q Let's refer to Exhibit 71. Does this  
 7:17:44 19 appear to be a letter of January 11, '65 by Mr. Park  
 7:17:48 20 of the insurance company to W.R. Grace?  
 7:17:50 21 A Yes.  
 7:18:00 22 Q Did you receive a copy of this in Libby in  
 7:18:02 23 January '65?  
 7:18:08 24 A I don't believe so, no, sir. I don't  
 7:18:08 25 recall.

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17:18:20 1 MR. HEBERLING: Okay. Let's stop  
 17:18:20 2 right here.  
 17:18:24 3 THE VIDEOGRAPHER: We're going off  
 17:18:28 4 the record at 5:18 on the 19th to recess this  
 17:18:28 5 deposition until tomorrow morning.  
 6 (Whereupon, the deposition of  
 7 Earl D. Lovick was recessed at 5:18 a.m.)  
 8  
 9  
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 14 I have read the foregoing testimony and  
 15 believe the same to be true, except for the  
 16 corrections noted above.  
 17 DATED this \_\_\_ day of \_\_\_, 1997.  
 18  
 19 Earl D. Lovick  
 20  
 21 Subscribed and sworn to before me this \_\_\_ day  
 22 of \_\_\_, 1997.  
 23  
 24 Notary Public for the  
 25 State of Montana,  
 Residing at \_\_\_\_\_  
 My Commission expires: \_\_\_\_\_

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 3 REPORTER'S CERTIFICATE  
 4  
 5 I, Jolene Asa, Registered Professional  
 6 Reporter and Notary Public for the State of Montana,  
 do hereby certify:  
 7 THAT I did report the foregoing transcript  
 8 after having first duly sworn the witness to testify  
 9 to the truth;  
 10 THAT said transcript was taken at the time  
 11 and place stated on the caption hereto; and  
 12 THAT the testimony of the witness was  
 13 taken in shorthand by me and subsequently reduced to  
 14 writing under my direction; and  
 15 THAT the foregoing is a true and correct  
 16 description of all the testimony of said witness to  
 17 the best of my ability.  
 18  
 19 IN WITNESS WHEREOF, I have hereunto  
 20 subscribed my name and affixed my seal of office  
 21 this 13th day of January, 1997.  
 22  
 23  
 24  
 25

JOLENE ASA, RPR, and Notary Public  
 for the State of Montana.  
 Residing in Flathead County, Montana.  
 My Commission expires 8/10/96